

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the Ivanpah Solar)	07-AFC-5
Electric Generating System)	
_____)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM B
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, OCTOBER 15, 2008

10:00 a.m.

Reported by:
Ramona Cota
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Jeffrey Byron, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Paul Kramer, Hearing Officer

Susan Brown, Advisor to Commissioner Boyd

Kristy Chew, Advisor to Commissioner Byron

STAFF AND CONSULTANTS PRESENT

Richard Ratliff, Staff Counsel

Eric Knight

Che McFarlin

PUBLIC ADVISER

Loreen McMahon

APPLICANT

Jeffery D. Harris, Attorney
Ellison, Schneider & Harris, LLP

Joshua Bar-Lev
BrightSource Energy

Alicia Torre
BrightSource Energy

John L. Carrier
CH2M HILL

ALSO PRESENT

Tom Hurshman, Bureau of Land Management

Tom Pogacnik, Bureau of Land Management

Robert M. Doyel, Bureau of Land Management

Lawrence J. Whalon, National Park Service, United
States Department of the Interior

PRESENT VIA TELEPHONE

Tanya Gulesserian, California Unions for Reliable
Energy (CURE)

Hana Rocek, Airport Consulting
representing Clark County Department of Aviation

Rylan Juran, Arctic Slope Regional Corporation
representing Clark County Department of Aviation

Mike Heckathorn, Trident Engineering

Traecey Anthony
San Bernardino County Solid Waste Management
Division

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P R O C E E D I N G S

10:05 a.m.

PRESIDING MEMBER BYRON: Good morning.

I am Jeff Byron. I am the Presiding Member on the Ivanpah siting project. I would like to welcome you all this morning. I apologize we are in Conference Room B and that we started a little bit late. There's a lot of activity going on this morning and last night.

I am the Presiding Member, as I indicated. My Associate Member, Commissioner Boyd, is not able to be here today. However, he is ably represented by his Senior Advisor, Susan Brown. My Advisor, Kristy Chew, is here with me as well.

Our Hearing Officer, Paul Kramer, will conduct the conference.

HEARING OFFICER KRAMER: Committee Conference.

PRESIDING MEMBER BYRON: Committee Conference. And we will make sure that we get a chance to go around and introduce everybody and those on the phone. I think that would be very helpful.

We are trying to be as responsive as we

1 can to a request of the Applicant that we sit and
2 hear their, as I recall, prayer for some work on
3 the schedule.

4 (Laughter)

5 PRESIDING MEMBER BYRON: And we are
6 certainly interested in getting all the parties at
7 the table here and see what we can do. I have a
8 number of questions that I know I want to ask but
9 I think it would be best to turn this over to the
10 experience in the room, Mr. Kramer, who will take
11 us through this.

12 HEARING OFFICER KRAMER: Well thank you.
13 Let's start with introductions first and we will
14 begin with the applicant. We will go around the
15 table and then anybody in the audience who wants
16 to introduce themselves and then finally the
17 people on the telephone.

18 MR. CARRIER: I am John Carrier with
19 CH2M HILL. I am the environmental consultant on
20 the project.

21 MR. HARRIS: I'm Jeff Harris of Ellison,
22 Schneider & Harris and we are counsel to Ivanpah
23 and Bright Source.

24 MR. BAR-LEV: I am Joshua Bar-Lev, I am
25 a Vice President of Bright Source Energy, Vice

1 President of Regulatory Affairs.

2 HEARING OFFICER KRAMER: Staff.

3 MR. RATLIFF: I'm Dick Ratliff, counsel
4 for the staff. Eric.

5 MR. KNIGHT: Eric Knight, Manager of the
6 Siting and Docket Office here at the Commission.

7 MR. McFARLIN: Che McFarlin, Project
8 Manager in the Siting Office.

9 MR. HURSHMAN: I am Tom Hurshman, BLM
10 Project Manager for the right of way applications
11 filed by Bright Source.

12 HEARING OFFICER KRAMER: Okay. And Tom,
13 you brought some of your colleagues with you from
14 the BLM?

15 MR. HURSHMAN: Yes, from BLM. If you
16 guys want to --

17 MR. POGACNIK: I am Tom Pogacnik. I am
18 the Deputy State Director for Natural Resources
19 with the Bureau of Land Management.

20 MR. DOYEL: And I am Bob Doyel. I am
21 the Chief of the Lands Division for the State of
22 California, the state office in Sacramento.

23 HEARING OFFICER KRAMER: You are welcome
24 to sit up at the table if you would like.

25 PRESIDING MEMBER BYRON: Yes, there is

1 room here if you want to join us. And also the
2 reason that might be helpful is because our
3 transcriber will want to get everything on the
4 record. And unfortunately those of you in the
5 back of the room don't get picked up by the local
6 mics. So we may need to ask you to come forward
7 if she signals me that we are not properly
8 receiving that, okay.

9 HEARING OFFICER KRAMER: And we will
10 save that seat in the corner there where the
11 papers are on the table for any members of the
12 public who want to come up and talk or members of
13 the audience. Does anyone else in the audience
14 wish to introduce themselves?

15 MR. WHALON: Yes. Larry Whalon, Deputy
16 Superintendent, Mojave Preserve, representing the
17 National Park Service.

18 PRESIDING MEMBER BYRON: Great, thank
19 you for being here.

20 HEARING OFFICER KRAMER: Anyone else?

21 Okay. Then on the telephone. I have
22 some of the names already so I'll just call your
23 name and you can fully introduce yourself. Tanya.

24 MS. GULESSERIAN: Good morning, Tanya
25 Gulesserian with CURE.

1 HEARING OFFICER KRAMER: And Hana.

2 MS. ROCEK: Hana Rocek, Airport
3 Consulting. And I am here for Clark County
4 Department of Aviation, the Ivanpah Airport, the
5 Ivanpah Airport project.

6 HEARING OFFICER KRAMER: And that
7 airport would be over the state line, just barely
8 in Nevada, from this project, right?

9 MS. ROCEK: It is. North of the site in
10 Nevada.

11 HEARING OFFICER KRAMER: Okay. And then
12 Rylan.

13 MR. JURAN: Yes. Rylan Juran, I am with
14 ASRC, also representing Clark County Department of
15 Aviation.

16 PRESIDING MEMBER BYRON: What was the
17 acronym that you said first there, Mr. Juran?

18 MR. JURAN: It is ASRC.

19 PRESIDING MEMBER BYRON: And what does
20 that stand for?

21 MR. JURAN: It's the Arctic Slope
22 Regional Corporation.

23 PRESIDING MEMBER BYRON: Thank you.

24 HEARING OFFICER KRAMER: It's a long way
25 away, isn't it?

1 MR. JURAN: Yeah. I'm actually based in
2 Minneapolis, though.

3 HEARING OFFICER KRAMER: Okay. Is
4 anyone else on the telephone?

5 MR. HECKATHORN: Mike Heckathorn,
6 Trident Engineering, Barstow.

7 HEARING OFFICER KRAMER: Could you spell
8 your last name for us, Mike.

9 MR. HECKATHORN: Yes, it's H-E-C-K-A-T-
10 H-O-R-N.

11 HEARING OFFICER KRAMER: And that was
12 Trident?

13 MR. HECKATHORN: T-R-I-D-E-N-T
14 Engineering.

15 HEARING OFFICER KRAMER: Okay, great,
16 thank you. Anyone else on the phone?

17 MS. ANTHONY: I just joined. This is
18 Traacey Anthony with San Bernardino County Solid
19 Waste Management Division.

20 HEARING OFFICER KRAMER: And Anthony,
21 A-N-T-H-O-N-Y?

22 MS. ANTHONY: Correct.

23 HEARING OFFICER KRAMER: While we are at
24 it, Tracy has several spellings.

25 MS. ANTHONY: Oh, it's T-R-A-E-C-E-Y.

1 HEARING OFFICER KRAMER: That wasn't
2 even one of the ones I was thinking of.

3 (Laughter)

4 MS. ANTHONY: No.

5 PRESIDING MEMBER BYRON: Welcome.

6 HEARING OFFICER KRAMER: Thank you.
7 Anyone else on the phone?

8 Okay. I don't think we hear a beep if
9 somebody else comes on but we will check again at
10 the end. And again for those of you on the
11 telephone, this is not a moderated line. So if
12 you have got background noise on your phone if you
13 could please mute your microphone in your handset
14 we would appreciate that.

15 The purpose of today's meeting is just
16 to discuss the schedule, basically. I have copies
17 of the various schedules, the most recent
18 committee schedule that was issued in September,
19 on the table back there for those in the audience
20 who need it, along with a schedule that was
21 proposed by the applicant earlier this month. And
22 then what they call a compromised schedule that
23 they circulated yesterday. So we have all those.

24 The reason I made copies of those is I
25 think they might be important visual aids as we

1 discuss the details of the applicant's concerns
2 and proposals to set a schedule that more closely
3 meets their needs.

4 And so to that end I think I will ask
5 Mr. Harris to summarize the applicant's concerns
6 and what they are proposing by way of a schedule.
7 And then we will let the other parties respond and
8 comment as they feel appropriate.

9 MR. HARRIS: Thank you, Mr. Kramer. My
10 name is Jeff Harris. I am counsel for Bright
11 Source on the Ivanpah project.

12 We have hit you all with a bit of paper
13 lately, which I actually want to try to take some
14 time to summarize and actually simplify a little
15 bit. We wanted to put more detail into those
16 filings so that if you really wanted to gnaw into
17 the details you had the opportunity to do that.

18 Let me just kind of talk through what we
19 are headed towards. And if people have questions
20 or comments along the way please let me know. I'm
21 going to be a long monologue.

22 Essentially what we are looking for is a
23 more efficient integration of the CEC and BLM
24 processes. And we think there are significant
25 opportunities to efficiently integrate those

1 processes and do so in a way that serves the
2 public interest and really offers a complete scope
3 of public participation.

4 We are very cognizant of the fact that
5 there are processes out there that have to be
6 followed. It is in our best interest that all
7 those processes be scrupulously followed. We
8 expect to create a very good administrative record
9 that will withstand any challenge down the road
10 and so we are not interested in streamlining or
11 shortcuts that are going to in the long run cause
12 us all problems. It is very clear to us that
13 everybody who is involved in this is invested in
14 making sure that that public interest is served.
15 So again, we are really looking for ways for
16 efficiencies more than anything else.

17 I spend a lot of time here at the
18 Commission and I can tell you that there's a lot
19 more process in the Energy Commission process than
20 there is in the BLM right-of-way process. It's a
21 lot of process. And I think that's a good thing.
22 There's a lot of opportunities for the public to
23 participate.

24 But those opportunities don't exist in
25 the NEPA process. In a typical NEPA process you

1 would have a scoping meeting, one public meeting,
2 followed by a draft document and a final document.
3 That's overgeneralized a little bit but that is
4 typically the way NEPA proceeds.

5 The Energy Commission process is much
6 more intensive. There are a lot more
7 opportunities for public participation. There are
8 things like workshops on draft documents that are
9 not always part of the NEPA process. There are
10 opportunities for comments on the draft document,
11 which is similar to the NEPA process, obviously.
12 But there will be then the filing of testimony,
13 which doesn't happen in the NEPA process. There's
14 designation of parties, which doesn't happen in
15 the NEPA process. A prehearing conference,
16 evidentiary hearings and briefings. All these
17 things are extra process.

18 And I think again I want to reiterate we
19 think those are good processes. It is important
20 to us in the long run that we hit all those
21 milestones moving forward. So we are not asking
22 for anything out of the ordinary from the
23 Commission. In fact it is in our interest that
24 you follow your regular processes.

25 But it really does boil down to that.

1 There is a lot more public process in the Energy
2 Commission than there is in the NEPA process
3 moving forward on a power plant siting.

4 PRESIDING MEMBER BYRON: Now most people
5 don't like all this additional government process
6 but I am going to infer from your comments,
7 Mr. Harris, that you do.

8 MR. HARRIS: It has been very good to
9 me.

10 (Laughter)

11 MR. HARRIS: But I think at the end of
12 the day you get -- and I'll be candid with you,
13 Commissioner, your process is grinding. People
14 come to me and say, I can only go to three
15 meetings over the next year. Which three do I go
16 to have the most impact on the process. That's a
17 really hard thing. If you don't go early you
18 don't get heard. If you go in the middle you are
19 not there for the end. And if you are there at
20 the end you are too late.

21 So it is a good process in the sense
22 that I think everything gets fully vetted. You
23 have never had a project successfully challenged
24 at the Supreme Court because you do build a great
25 record. But it does result in a grind, in a

1 march. And what we are looking for are ways to
2 efficiently coordinate that grind through a
3 rigorous BLM process. And I guess I want to be
4 careful not to suggest that the BLM process is not
5 rigorous. Ask anybody who has gone through a NEPA
6 process, it is. And there's a lot that has to be
7 done to get a right-of-way grant.

8 But there are requirements in your
9 certified regulatory program. And you are not
10 typical CEQA. That's an important point and I
11 think one that may not always be apparent to folks
12 who are used to federal processes being
13 coordinated with the state process. The power
14 plant siting process is not like a regular
15 coordination with a county on an EIR or EIS
16 process. There's a lot more process in the
17 certified regulatory program moving forward.

18 And they are not exact analogies. When
19 you have regular CEQA. Can I call it regular
20 CEQA? Non-Energy Commission CEQA and NEPA, they
21 line up very nicely. You have a draft
22 environmental document, a draft EIS and a draft
23 EIR, then a Final EIS/EIR. You have a lot more
24 iterations along the way. And what we are asking
25 you to do basically is look at how those

1 iterations line up and look at some flexibility
2 moving forward.

3 HEARING OFFICER KRAMER: Can I stop you
4 there for a second?

5 MR. HARRIS: Sure.

6 HEARING OFFICER KRAMER: I see we ran
7 out of copies of the schedules. Did anyone want
8 one who didn't get one?

9 MR. HARRIS: We have some copies too of
10 our filings if that will help.

11 HEARING OFFICER KRAMER: Okay. I guess
12 not. Go ahead.

13 MR. HARRIS: So really -- And I'm sorry
14 to be going so deep into the process but I guess
15 our whole purpose here is to talk about process.

16 What we are looking for are ways to
17 proceed in parallel, not sequentially. That, we
18 think, will reduce the demands on both the
19 governmental entities and allow the Applicant's
20 project to move forward.

21 We don't want the lagging item to be the
22 one that drives the schedule. There is always
23 something that is last. It is going to be, you
24 know, something related to biology or something
25 related to, you know, visual impact or what have

1 you. But we want to make sure that the last item
2 in the schedule isn't the one that sets the tone.
3 And we are looking for you basically to be able to
4 multi-task and let some of those extra Energy
5 Commission processes play forward.

6 We are obviously very interested in
7 this. We have filed twice in two weeks. And I
8 guess I would like to let Joshua Bar-Lev now
9 introduce himself and explain the urgency from the
10 company's perspective so that you will know why we
11 have asked you to come here and why we are asking
12 you to really take a hard look at some
13 efficiencies. So Joshua, if you would, please.

14 MR. BAR-LEV: Thank you very much for
15 letting me appear here. I'd like to say from my
16 point of view I like California. I think
17 California's regulation, while it is sometimes
18 onerous, is the price you pay for having a very
19 progressive state that really thinks very deeply
20 and hard. So I am not complaining about the
21 process in California. It does take a long time.

22 And what we are seeking here is really a
23 matter of months, realistically, where we overlap
24 some processes, integrate some processes, so that
25 we are able as a company to commercially get this

1 done. So let me just say a couple of things.

2 First of all, I was here 18 years ago
3 for the last Luz plant, which was the last time
4 that you certified a large commercial solar
5 project. Those projects are still operating, all
6 nine of them, in the Mojave. And we were very
7 proud of them. But that was our last project.

8 We reformed our company, I think it was
9 December of '06, so roughly 22 months ago. We
10 started with, I don't know, six or eight of us,
11 and we are now up to 20 people in Oakland and I
12 think 70 people in Israel. We have a blue ribbon
13 set of investors who really believe in commercial
14 solar technology, British Petroleum, Google,
15 Morgan Stanley, Vantage Point. Everyone believes
16 in this and really wants to make it happen.

17 We have designed this project, this
18 technology to have minimal environmental impact.
19 We have chosen a site that is near roads, that is
20 already a relatively degraded site. We have
21 designed a technology to have air cooling so we
22 don't use water. We have done everything that we
23 can think of to make this compatible with the
24 environmental, the high-quality environmental
25 requirements in this state and we are proud of

1 that.

2 It is really important for us to get
3 this project, to be able to break ground on this
4 project by the summer of next year. As you know
5 we have gotten two critical pieces of legislation
6 done in the last, really in the last month. One
7 was a property tax exemption here in California.
8 I think everyone was on hold until that was done.
9 Leno 1451, AB 1451. The Governor signed it two,
10 three weeks ago. And then miracle of miracles we
11 got this investment tax credit, the entire solar
12 energy industry got it, through the package that
13 was passed by Congress. So there are a lot of
14 companies that are now feeling like they are ready
15 to go. And that is to everyone's benefit.

16 We are the first out of the box. So we
17 can understand that everyone is going to try to
18 figure out how to do this right using us as the
19 test case. And that is fine, we accept that.

20 But we already have had to make a major
21 commercial adjustment in our contract with PG&E
22 because of transmission, transmission slowdowns.
23 And we are really running up against it if we have
24 a delay in this project. We need a couple of
25 years to construct this project.

1 We need to finance this project. We are
2 not going to get any financing until we know
3 that -- until all of the approvals are provided by
4 both your agencies. And it is difficult enough to
5 get financing in this new economy, the new
6 economic difficulties.

7 And there's a huge ramp-up to get the
8 workers ready to go. It is going to be a very
9 large work force. So we need lead time on
10 financing, on a ramp-up. And we have got a
11 contract. And we don't want to have to go back
12 for an amendment to that contract.

13 I guess the other thing I would say is
14 we have spent probably close to \$10 million in
15 outside costs to comply with this process and
16 probably at least that much inside costs, inside
17 of our company. So it is really important for us.

18 And it doesn't seem to me, speaking as
19 an officer of this company, that we are asking
20 that much. We are asking for some adjustments.
21 We are asking for a parallel process. We are
22 asking for ultimately a few months of acceleration
23 over what we are hearing from the regulatory
24 agencies so that we can get this done by the
25 summer of 2009.

1 We would really like to be able to tell
2 the other solar companies and the public that this
3 state is committed to making this work. Really,
4 everyone is watching. At least every couple of
5 weeks one of the other companies in our trade
6 association -- We've organized a trade association
7 called the Large Scale Solar Association. Which
8 we have got Ausra and Solel and OptiSolar and
9 everybody.

10 And they all say, well how is it going?
11 You guys are first out of the box. How is going
12 to get your project through. And we say, well
13 very thorough, very diligent, and we think so far
14 it will be okay. That we will be able to get
15 finished with this and get our work force out
16 there and get our financing and get this thing
17 finished by 2011. So please keep that in mind.

18 I guess I will just end by saying,
19 please do your best to get us those relatively
20 short amount of time accelerations so that we can
21 get this done by the summer.

22 MR. HARRIS: Thank you.

23 PRESIDING MEMBER BYRON: Mr. Bar-Lev,
24 can you say anything more about this contract? I
25 realize you may not want to but we have seen this

1 before in other applications. Is it an onerous
2 power purchase agreement that is causing you these
3 difficulties or did you underestimate the state
4 process? I'm just trying to get a sense of your
5 deadline if you'd care to share it.

6 MR. BAR-LEV: Well I don't want to get
7 into -- It's, of course as you know, Commissioner,
8 it is a confidential contract and I wouldn't want
9 to get into too much detail. But we started with
10 a much earlier deadline, a contract delivery
11 deadline in that contract.

12 And then we learned that the utility,
13 Southern California Edison couldn't, just couldn't
14 do it. We thought to do 40 miles of transmission
15 lines was just not going to be that difficult.
16 But as you probably know, with the ISO
17 interconnection process and the queuing and the
18 amount of construction, transmission construction
19 that is going on, and the need to get a CPCN at
20 the Public Utilities Commission, all of it is just
21 taking a long, long time. For 40 miles of
22 transmission line it is going to end up being
23 years.

24 So we have had to already go back. This
25 was before we submitted it to the Public Utilities

1 Commission. We already had to go back and get
2 basically a delivery provision that gave us some
3 flexibility. And there are various adjustments to
4 the purchase price and all that which I can't
5 remember right now for a different delivery time.
6 So we do have a delivery provision that can
7 accommodate some flexibility.

8 But we need two years to construct this
9 project and that is probably making it a little
10 tight. So the delivery calls -- What we have is a
11 2011 delivery date in that contract.

12 There is a little -- I am not going to
13 tell you that I know exactly when the penalty
14 provisions kick in. I wouldn't want to get into
15 that kind of detail. But penalty provisions begin
16 to kick in with that contract and I wouldn't want
17 to incur those. And as it we are going to be very
18 tight all the way along. I hope that answers your
19 question.

20 PRESIDING MEMBER BYRON: It does not but
21 that's okay.

22 MR. BAR-LEV: Well no --

23 PRESIDING MEMBER BYRON: You can't
24 really provide a lot of the information.

25 MR. BAR-LEV: Yes.

1 PRESIDING MEMBER BYRON: But what we are
2 trying to get a sense here is of the pressures
3 that you are under as an applicant. And of course
4 you called for this conference. And we are glad
5 to hear from you in this regard on the issues that
6 you are facing. All I can tell you is that we are
7 going to take that into consideration with regard
8 to the schedule that we come up with.

9 MR. BAR-LEV: I appreciate that, thank
10 you.

11 HEARING OFFICER KRAMER: Where is this
12 transmission line you are talking about?

13 MR. BAR-LEV: It's the Eldorado --

14 MS. TORRE: It's the Eldorado
15 Substation.

16 PRESIDING MEMBER BYRON: Ms. Torre, you
17 may need to come up just to the table. And
18 identify yourself so we get you in the transcript
19 correctly.

20 MS. TORRE: I'm Alicia Torre. I'm the
21 Project Manager for the Ivanpah projects. And the
22 transmission upgrade that Edison has planned, not
23 merely to serve this project but to serve about
24 1900 megawatts of planned generation in that area,
25 is from what will be a new proposed substation

1 near the project called the Ivanpah Substation, 36
2 miles to Eldorado in Nevada. Most of that line is
3 in Nevada, 33 miles of that line, and is an
4 upgrade. And Tom Hurshman is the Project Manager
5 for the Edison project so he can probably tell you
6 even more.

7 MR. HURSHMAN: Yes.

8 MS. TORRE: But they have yet to file
9 for the start of the process. They have been
10 gathering -- They have spent a lot of money
11 gathering environmental information and preparing
12 essentially the equivalent of the Application for
13 Certification.

14 MR. HARRIS: And I want to point out too
15 that, as Alicia said, that project will serve more
16 than just our projects. Essentially Edison
17 decided that it would be best to cluster a bunch
18 of projects together as opposed to dealing with us
19 just, you know, directly on our own project so
20 that has resulted in some delay.

21 MS. TORRE: Quite simply, our project
22 totals about 400 megawatts at three different
23 plants that together make up the Ivanpah complex.
24 What they are building is 1400 megawatts of
25 capacity. This is not about just Ivanpah.

1 But I think the basic point, you asked
2 about the contracts as well. Having part of the
3 urgency for us is yes, there are financial
4 penalties that kick in if we do not hit commercial
5 operation in 2011. But in addition there are
6 extra, other projects coming behind us. There are
7 five PG&E contracts. And there are negative
8 ramifications for delay of the first. Successful,
9 timely completion of the first project is a
10 critical component to the on-line dates and the
11 activity for the next. The first project is 100
12 megawatts. There are another 400 megawatts for
13 sure and potentially more than that.

14 So it not only affects the Ivanpah
15 project what you do here today, you know. It
16 affects those other projects coming down the line.
17 It affects BrightSource as a company and I think
18 also a message to the industry as a whole as to
19 whether -- what the state's commitments to
20 renewable projects are.

21 PRESIDING MEMBER BYRON: Okay. These
22 other projects are potential future applicants,
23 right? I don't believe we --

24 MR. BAR-LEV: No, the Ivanpah covers
25 400. Of the 400, 300 of the 400 are for PG&E.

1 And yes, down the road we are going to be applying
2 for the rest of the PG&E projects.

3 PRESIDING MEMBER BYRON: Okay.

4 HEARING OFFICER KRAMER: In that area?

5 MR. BAR-LEV: No. Broadwell.

6 MS. TORRE: Broadwell is back closer to
7 Barstow.

8 MR. BAR-LEV: Yes.

9 MS. TORRE: It's closer to the Pisgah
10 Crater Substation.

11 HEARING OFFICER KRAMER: So then this
12 line would serve beyond the Ivanpah?

13 MR. BAR-LEV: No, no, it's a different
14 line.

15 HEARING OFFICER KRAMER: Okay.

16 MR. BAR-LEV: I think Broadwell is what,
17 south, just south of Barstow.

18 MR. HARRIS: We're kind of mixing a
19 little bit. Our contractual obligation to PG&E
20 for 900 megawatts total with the project. They
21 are not one and the same. They are for delivery
22 of 900 megawatts from various projects.

23 HEARING OFFICER KRAMER: But in building
24 the line as they are proposing, SCE is assuming
25 that there will be more generation in the Ivanpah

1 area?

2 MS. TORRE: Not our projects.

3 MR. HARRIS: Not our projects.

4 MS. TORRE: There are other, there are
5 something like 1900 megawatts in the queue in that
6 general vicinity, in the interconnection queue.
7 And there may be more, that's an old number.
8 That's probably a June number.

9 HEARING OFFICER KRAMER: But apparently
10 not applied for with us yet.

11 PRESIDING MEMBER BYRON: Right, and that
12 is what I am trying to get to.

13 MR. HARRIS: It could be in Nevada.

14 PRESIDING MEMBER BYRON: Turning to
15 staff. These projects are not before us at this
16 time. These are future potential projects.

17 MR. RATLIFF: Some of them are
18 photovoltaic projects.

19 PRESIDING MEMBER BYRON: So they won't
20 be before us.

21 MR. BAR-LEV: Yes. Or wind.

22 MR. HARRIS: Or wind. So they will
23 never come before you.

24 PRESIDING MEMBER BYRON: Mr. Hurshman.

25 MR. HURSHMAN: I was just going to say,

1 yes, that there are a number of projects that
2 won't make it to the CEC queue because they are
3 wind projects and photovoltaic projects. And
4 right now BLM is not moving forward with the
5 actual processing of any of those preliminary
6 right-of-way applications that have been filed
7 either. So this is still the only project this
8 far ahead in our process.

9 PRESIDING MEMBER BYRON: And that is all
10 we are really focusing on here today.

11 Mr. Harris, did you want to continue
12 with something?

13 MR. HARRIS: I was just going to add the
14 PV and wind angle. That's part of the reason you
15 haven't heard about them, because they are not
16 jurisdictional.

17 If I can I'll continue with our kind of
18 presentation. You sort of heard now the big
19 picture of why we are here from Joshua and you
20 have heard some of the background. In our most
21 recent filing there is a lot of recounting of the
22 history of the development of the MOU. The
23 famous, go away Jeff, comment. I had that one
24 last time where the agencies told us to go away
25 and we came back.

1 The MOU is I think the underpinning of
2 this process. I want to be very clear that we are
3 not suggesting that you abandon that. I also want
4 to be very clear that we are not suggesting that
5 you guys go on separate paths. So let me go into
6 sort of the details of what we propose.

7 And we put two different schedules in
8 front of you. There's a lot of details in those
9 schedules. But it really does come down to the
10 linkages you make between the two significant
11 environmental documents that --

12 PRESIDING MEMBER BYRON: And I just want
13 to make sure. Last night I was reviewing an
14 earlier schedule. You now have a response to
15 staff discussion of scheduling alternatives and
16 that is what you are referring to as the
17 compromise schedule?

18 MR. HARRIS: Correct.

19 PRESIDING MEMBER BYRON: Okay.

20 MR. HARRIS: The two nomenclatures we
21 have used is the Applicant's Proposed Schedule,
22 which is our 10/1/08 document. That's the first
23 document, October 1st. And then our most recent
24 filing is what we call the Compromise Schedule.
25 We wanted to give them names so we could

1 distinguish between them, frankly. So the most
2 recent one is the Compromise Schedule.

3 PRESIDING MEMBER BYRON: And when did
4 staff, when did staff receive this?

5 MR. HARRIS: They received it yesterday.

6 PRESIDING MEMBER BYRON: Okay. I'm sure
7 they have had plenty of time to review it.

8 (Laughter)

9 MR. HARRIS: We spent a lot of time
10 trying to prevent an internal filibuster to get it
11 to them as quickly as possible. We apologize for
12 not getting it to them sooner but Monday was a
13 holiday, as you all know.

14 We did have meetings on -- actually we
15 e-mailed Saturday, Sunday and Monday to try to get
16 it out as early as possible on Tuesday. And Mr.
17 Carrier here was putting together graphics at the
18 last minute that were both instructive and
19 correct. Anyway, I do apologize. The final we
20 made, the last one we made yesterday was not
21 required but it really was an opportunity for us
22 to try to look for ways to move the project
23 forward.

24 There are really just two, significant
25 federal deadlines to keep in mind. The most

1 important is that there is a 90 day period that is
2 required between Draft EIS and Final EIS. Now
3 there are two BLM actions here. There's a right-
4 of-way grant and there's also the land use
5 amendment. They call it RMP, Resource Management
6 Plan Amendment. That plan amendment requires a
7 longer time period. That's the 90 day period
8 between Draft and Final EIS. And that really --
9 Paul Kramer?

10 HEARING OFFICER KRAMER: Yes? Hello.

11 MS. GULESSERIAN: Sorry. My line got
12 disconnected, I'm back on. Sorry for the
13 interruption.

14 HEARING OFFICER KRAMER: Okay.

15 MR. HARRIS: So that 90 day period is
16 what we are trying to figure out how to most
17 effectively utilize.

18 The other issue on the federal side is
19 the requirement that their Notices of
20 Availability, NOAs, a lot of jargon here. Under
21 federal law the BLM is required to publish those
22 NOAs for a draft environmental document and for a
23 final environmental document.

24 One of the questions has been how long
25 will it take BLM to go through that internal

1 process of reviewing the draft document that is
2 put together and getting sign-off to be able to
3 then go to the Federal Register and get it
4 published, which doesn't happen the day you go to
5 the Federal Register.

6 Those have been kind of the scheduling
7 issues we have been working around. The lead time
8 for the NOAs and also this 90 day period. So our
9 proposals are really built around those. And what
10 I would like to do is go through them in the order
11 we presented them to you so I'll start with our
12 October 1 filing, the Applicant's Proposed
13 Schedule.

14 In essence what we asked to do in that
15 document was to allow the Energy Commission
16 process to move forward while BLM through their
17 own internal NOA process. Now we are hopeful that
18 the NOA process would be very quick but we can't
19 control that process. We have been told it may
20 take up to eight to ten weeks depending on the
21 circumstance. And with change in administration
22 certain at the end of the year there's a whole lot
23 of variables that go into that process.

24 So what we suggested in that schedule,
25 the first schedule, the Applicant's Proposed

1 Schedule of October 1st, was essentially to allow
2 the Energy Commission to publish their Preliminary
3 Staff Assessment and start the workshop process so
4 we can get that additional Energy Commission
5 public process going. And then allow the BLM
6 whenever they can catch up with their NOA process
7 to get their NOA out and published in the Federal
8 Register and start the clock that way.

9 It really is, more than anything else,
10 an effort to take advantage of the down time, if
11 you will, that is required for the NOA
12 publication. So that was our suggestion. The
13 overall objective is to get this process really
14 started in December. And by this process I mean
15 the Energy Commission workshop process.

16 I almost want to go over to the white
17 board if I can. Can I do that, Paul, real quick?

18 HEARING OFFICER KRAMER: Sure.

19 MR. HARRIS: And again, I am trying to
20 simplify what we are talking about.

21 HEARING OFFICER KRAMER: Let me turn it
22 on because we can actually print it out later.

23 MR. HARRIS: And I have a third-grader's
24 handwriting, okay.

25 PRESIDING MEMBER BYRON: Mr. Harris,

1 hang on one moment. I want to make sure we can
2 record all this. We'll let you know if you are
3 not speaking loudly enough, okay.

4 MR. HARRIS: Rarely a problem. If I
5 stand here can they hear me better?

6 Basically what we have is trying to
7 figure out a linkage between the Energy Commission
8 processes on the left side and the BLM processes
9 on the right side. Under the MOU this is the
10 linkage that you envision. You envision a joint
11 Preliminary Staff Assessment, a Draft EIS. Final
12 Staff Assessment, Final EIS.

13 PRESIDING MEMBER BYRON: And those are
14 equivalent documents?

15 MR. HARRIS: Those are equivalent
16 documents. In our schedule proposed on the 10th
17 we basically have just said, let's separate out
18 that NOA process here. And when the document is
19 ready -- Basically allow the Energy Commission to
20 go through their workshop process. Allow this NOA
21 process to sort of catch up, if you will. And
22 whenever they get published that will start their
23 90 day period. But it is basically looking to
24 take advantage of the down time, if you will, for
25 the NOA publication.

1 These two documents are linked. That in
2 really short form is what we are proposing in our
3 10/1 schedule. Is to allow the Energy Commission
4 process to move forward, you know, with your
5 workshops, the PSA workshops, while the BLM's NOA
6 process works forward.

7 The rest of the dates in the schedule
8 are pretty self-explanatory. We've got the
9 crucial 90 days between draft and the
10 environmental document that is reflected in the
11 schedule we put forth. We think those dates in
12 the proposed schedule of 10/1 are aggressive but
13 not unduly so. We are asking you to put some
14 resources into moving this thing forward.

15 But we are also asking you to, again,
16 officially integrate the processes. So I think in
17 essence what we are asking you to do is to de-link
18 or decouple these processes moving forward. We
19 believe that NEPA is sufficiently flexible to
20 allow BLM, when they publish their Notice to
21 publish a cover letter and then also attach to
22 that the same basic environmental document and
23 declare that to be their Draft Environmental
24 Impact Statement.

25 So in a nutshell that's really what we

1 are looking for. And that all is with the
2 objective of getting this to December workshops,
3 which allows us to get to a summer 2009 Decision.

4 A variation on this theme that we asked
5 you all to consider yesterday, and again, most of
6 you haven't had time to look at the document, is
7 fairly simple. All we are asking to do is
8 essentially change this linkage. And we are
9 moving the BLM linkage towards the end of the
10 process.

11 Where in this scenario we have got BLM
12 linking with the preliminary staff document, under
13 our compromise schedule basically what we have
14 done is move the linkage back in time. So this
15 document, the Final Staff Assessment, serves as a
16 Draft Environmental Impact Statement. And this
17 document, the PMPD, forms the basis for the Final
18 Environmental Impact Statement.

19 Again with respect to the 90 day periods
20 in here. We essentially have put the BLM issues
21 back. We think that there's good arguments both
22 ways on those things. This is the linkage that is
23 envisioned by the MOU. It is typically the
24 linkage the Commission has argued for when people
25 have challenged your process.

1 The problem here is with a certified
2 regulatory program there is not one particular
3 document that looks exactly like an EIR, okay. We
4 have got staff documents that are produced there
5 but not a Commission document. And this is a
6 constant problem with integrating your certified
7 regulatory program with the regular CEQA aspects
8 of things.

9 We have had this problem in the past
10 about what document is the appropriate document.
11 For example, in a power plant siting case where
12 there is a land use entitlement. Somebody wants
13 to do a general plan amendment so they can be
14 consistent as opposed to doing an override.

15 The question is then, which
16 environmental document does the local government
17 use to do their general plan amendment? And we
18 have had folks argue PSA/FSA and FSA/PMPD. We
19 have had people argue Final Draft. So this is not
20 unique to this BLM situation. It really is a
21 creature of the Energy Commission's certified
22 regulatory program more than anything else.

23 The advantage of slipping, if you will,
24 the linkage back in time, and I think there are
25 several. Number one, this will be a higher

1 quality document in a lot of respects because we
2 will have had a draft document out, we will have
3 had workshops. You will have our comments, you
4 will have comments from other people moving
5 forward. So in a lot of ways this looks more like
6 a detailed Environmental Impact Statement than the
7 preliminary document will, obviously.

8 That really, in a nutshell, is the way
9 we have envisioned this. Now this particular
10 linkage has been used by the Commission in the
11 past in WAPA, for the Sutter Project and also for
12 the --

13 MS. TORRE: East Altamont.

14 MR. HARRIS: East Altamont Project. It
15 is not unprecedented for the Commission to make
16 this sort of linkage. One of the advantages,
17 quite frankly, to this is it moves the BLM process
18 probably out to January when you guys are going to
19 have a better idea of what the world looks like
20 moving forward. And it also does allow you to
21 participate in the workshops to put your concerns
22 on the table.

23 That really in a nutshell is what we
24 have asked you all to consider. And we have done
25 that really all with the same goal in mind, and

1 that is the summer of 2009. That is the
2 objective. We think it is reasonable. That gets
3 us a decision in about 18 months.

4 MS. TORRE: Twenty-one months from data
5 adequacy.

6 MR. HARRIS: Twenty-months, I'm sorry.
7 Twenty-one months, I am corrected, by the project
8 manager who is responsible for the budget and my
9 invoices, so it is 21 months. Which is still
10 considerable time but, you know, we are first. We
11 knew we were going to be first. We accepted that
12 as both a benefit and a burden. That is why we
13 would like you to think about this.

14 I guess one other thing I would mention,
15 which is also in our pleadings, that the MOU
16 itself is sufficiently flexible to allow you to do
17 either one of these schedules. It says right in
18 there that there is no need to amend the MOU.
19 That the flow chart, and this is quoted in our
20 pleadings if you want to see the actual quotations
21 from the BLM, from the MOU. We are not going to
22 have to do an amendment to the MOU to move forward
23 this way.

24 Now you may all decide that you'd prefer
25 to keep this route because it more traditional

1 with what you have done in the past. You may
2 decide to go this route and say it only applies to
3 this case because we have kind of ended up here
4 where we have. We are not asking you to establish
5 a hard and fast precedent. We don't think there
6 is a need to amend the MOU, necessarily, moving
7 forward.

8 MS. McMAHON: I'm Loreen McMahon. I am
9 the Associate --

10 PRESIDING MEMBER BYRON: You may need to
11 step up to the table.

12 HEARING OFFICER KRAMER: Come up to the
13 microphone.

14 PRESIDING MEMBER BYRON: Just so we
15 capture it, Ms. McMahon.

16 MS. McMAHON: I am Loreen McMahon. I am
17 the Associate Public Adviser for the Energy
18 Commission. Thank you. And before you sat down I
19 had a question.

20 MR. HARRIS: Okay.

21 MS. McMAHON: I was wondering if you
22 could address how you perceive the changes to the
23 public. How you would encapture the benefits to
24 the public. What you have thought about in your
25 different scenarios.

1 MR. HARRIS: I think one of the things
2 that I like about this is that under either one of
3 these scenarios all the regular Energy Commission
4 processes play out. You will still have a, you
5 will still have a Preliminary Staff Assessment and
6 you will still have workshops on that Preliminary
7 Staff Assessment. You will still have a Final
8 Staff Assessment. You will still have comments on
9 that. So I don't think we lose any of the typical
10 steps.

11 MS. McMAHON: What I am more thinking
12 of. And let me back up a step so you can kind of
13 understand my thought process. I have previously
14 worked for DOE and I was the lead on the Sutter
15 project, I was the federal lead. So I know the
16 thought processes in the pairing because we were
17 the first ones to try to pair at all.

18 However, I am wondering if -- One of the
19 things that we thought seriously about when we
20 were doing the pairing was the federal need, and
21 also the CEQA need, to include the public and to
22 not confuse them with the processes. To make it
23 the most seamless for them in terms of how many
24 hearings they had, how many documents they had to
25 review. So I am wondering if there are, if this

1 is causing more confusion for them or less
2 confusion?

3 It is just a different pairing but it is
4 giving them an extra document. Because you are
5 giving them -- I'm seeing that the PSA comes out
6 and then a pairing and then a pairing, so it's a
7 third step. So I'm wondering if, you know, how
8 they would perceive that. Obviously no one has
9 had a chance to think about that, I am throwing it
10 out there. And if that is going to require more
11 work on getting them through that understanding.
12 If we need more hearings. How that fits.

13 MR. HARRIS: I'm glad you are with the
14 Public Adviser's Office because if there is any
15 confusion created it is going to be people not
16 understanding your process, I think, is really
17 what it comes down to.

18 If you, if you look at just the federal
19 side of things, we are going to proceed exactly --
20 If you assume this is a PV project, all right, so
21 it is non-Energy Commission jurisdictional, how
22 would you proceed? You have a scoping meeting,
23 you have a Draft EIS and you have a Final EIS and
24 you have a Decision. All those same steps are
25 going to occur under this joint, under either one

1 of these scenarios. So from that perspective the
2 federal process is exactly the same.

3 And what we propose on the Energy
4 Commission side again is to follow all those same
5 steps. It is going to be interesting to see, you
6 know, people who are used to dealing with the
7 Desert and BLM and the federal process are going
8 to come to you and say, what is this Energy
9 Commission process, how does it work? What does
10 it mean to be an intervenor? What is a prehearing
11 conference? I can really cross-examine somebody?
12 All that fun stuff that happens in your process.

13 But all of the same milestones are met.
14 And I think we have married up the processes so
15 there is no, there is absolutely no shortcuts
16 here. And again, that is not to our advantage
17 because we figure on having to defend this thing,
18 at least in administrative litigation if not
19 regular litigation.

20 We have thought about it and I think the
21 complexities are on the Energy Commission side.
22 It is just going to require diligence from all of
23 us to keep people informed and explain what an
24 intervenor is and what are hearings, those kind of
25 things.

1 MS. TORRE: If I could add a thought.
2 Because they are two different processes it is
3 confusing. It requires more of your office.
4 Whichever way we go it has to be explained. What
5 your comment was is that on the compromised
6 schedule there is one more document.

7 MS. McMAHON: Um-hmm.

8 MS. TORRE: And I would say that an
9 offset, you know, for that, that is something to
10 value, is that given the timing, it is coming out
11 after the mitigation conditions in the PMPD have
12 been discussed and vetted. And therefore that can
13 be incorporated in the final EIS and that is an
14 advantage. Because one of the things you have
15 with the Final Staff Assessment is you don't yet
16 have the decision makers' findings of fact, the
17 conclusions of law that drive the mitigations.

18 So it is a potential offset in terms of
19 when you are thinking about how do you make that
20 clear to the public. One of the good things about
21 the Final EIS coming out at a point where it can
22 integrate that is that it is less confusing. When
23 you have the Final EIS paired with the Final Staff
24 Assessment many of those things are still subject
25 to change. And I guess you can pick them up. I

1 mean, Tom will say you can pick them up in the
2 Record of Decision. But it means that the public
3 has a chance to see it in the Final EIS.

4 MR. HARRIS: I think there will actually
5 be --

6 MS. TORRE: So it is maybe an offset is
7 just to say, it is going to require explanation
8 either way you go.

9 MS. McMAHON: Right.

10 MS. TORRE: And requires outreach to do
11 that. And there is this potential advantage to
12 offset the extra.

13 MR. HARRIS: I think there is another
14 great advantage which is that the BLM NOA, if BLM
15 chooses to do that, they can explain your process
16 and even put your phone number in there to let
17 people know about the Energy Commission process.
18 So in addition to people who are going to pick up
19 the Energy Commission process as they would
20 normally, there is going to be an opportunity
21 potentially in the BLM process to point back to
22 your process to get people involved.

23 But again, I don't see it as an extra
24 document. If I am just looking at this through a
25 BLM-only filter what I am going to see is that

1 Draft EIS with an NOA and a Final EIS with an NOA.
2 Which is what I would see on a solar project in
3 the desert.

4 HEARING OFFICER KRAMER: One thought
5 occurs to me. If ultimately the project that is
6 approved, if it is, the conditions in both the BLM
7 permits and the Energy Commission's permit have to
8 be consistent. And I wonder if up to the point of
9 preparing the PMPD under the compromise scenario,
10 BLM will not have received and processed all of
11 the public comments it is receiving in its
12 process. And I wonder if that will handicap their
13 ability to be able to come to a final conclusion
14 about the conditions they want to see, so they can
15 communicate them to the committee so that we are
16 aware of them. And if we agree, include them in
17 our decision.

18 MR. HARRIS: Actually one of the
19 requests that we are going to make of you today is
20 to ask for a commitment that your staff be
21 available to help BLM respond to comments. One of
22 the concerns that I think you'll probably hear
23 from BLM, and I won't purport to speak for them,
24 is their ability to --

25 One of the things that is different

1 about the EIS process is that it does require a
2 response to comments. By the time we get to this
3 stage your staff will have prepared their
4 document. They will be intimately familiar with
5 it. If we are over here in this scenario, they
6 will actually be done. They will have testified.
7 Mr. Ratliff's work won't be done because he will
8 be writing briefings.

9 But the response to comments over here
10 is another area where we are going to need some
11 help. And that is probably the long lead time
12 thing. The only things we have heard BLM say is
13 they don't have a staff to do this and you all
14 have volunteered under the MOU to take the pen and
15 to write, you know, the environmental document,
16 the base environmental document.

17 And one of the things that we think is
18 important for you to help BLM do, since they don't
19 have a staff with a pen, is to help them pick up
20 the pen with a response to comments. Now
21 obviously BLM has an internal process. They have
22 got solicitors involved and they are going to have
23 their own staff involved. But to the extent that
24 you can provide them with additional support in
25 that regard, I believe that is an important thing.

1 We have also offered to help with contractors to
2 help with those response to comments as well.

3 HEARING OFFICER KRAMER: Okay, well let
4 me put that --

5 MR. HARRIS: I don't know if I answered
6 your question.

7 PRESIDING MEMBER BYRON: I'm not sure.

8 HEARING OFFICER KRAMER: Let me put that
9 question on the table for the moment and we'll get
10 back to it.

11 PRESIDING MEMBER BYRON: Okay, good.

12 MR. HARRIS: Did I answer your question,
13 Paul? I'm not sure I did.

14 HEARING OFFICER KRAMER: No. Let me
15 illustrate it with hard dates. The compromised
16 schedule has the 90 day comment period ending on
17 April 15. We know from experience that comments
18 tend to come in closer to the 90th day than the
19 first day. There is no bell curve there. And it
20 also has the PMPD being issued on that same day.

21 So it seems to me it creates the risk of
22 a disconnect on some condition. It might be minor
23 enough that it doesn't require recirculation of
24 the PMPD but it could very easily require some
25 additional time to revise either BLM's position or

1 the PMPD. Which could introduce delay that you
2 are not terribly interested in.

3 MR. HARRIS: I think it won't cause a
4 delay, Paul, and let me explain why. I added on
5 the 10/1 schedule up there, underneath there, CEC
6 Decision and the Record of Decision by the BLM.
7 The Record of Decision -- and again, BLM should
8 speak to this. But my understanding is that the
9 important thing at the end of the day is that that
10 Record of Decision incorporates all mitigation and
11 all discussion of environmental issues. So I
12 think even after the FEIS there's ability to pick
13 up those potential differences, disconnects if you
14 will, in the ROD. But, you know, Tom, if you want
15 to speak to that, you know.

16 PRESIDING MEMBER BYRON: It's tough
17 enough that we have acronyms galore.

18 MR. HARRIS: Yes.

19 PRESIDING MEMBER BYRON: Now you can't
20 turn the acronyms into words, okay.

21 MR. HARRIS: Okay.

22 PRESIDING MEMBER BYRON: A ROD is an R-
23 O-D, a Record of Decision.

24 MR. HARRIS: R-O-D, Record of Decision,
25 sorry.

1 PRESIDING MEMBER BYRON: All right. I
2 think, I'd defer to Mr. Kramer but I think I'd
3 prefer to give the applicant full opportunity to
4 lay out the case for the schedule they are
5 proposing.

6 HEARING OFFICER KRAMER: Okay.

7 PRESIDING MEMBER BYRON: And then we'll
8 get into the applicant and BLM and the
9 difficulties that may be involved in this.

10 HEARING OFFICER KRAMER: Okay. Did you
11 have more?

12 MR. HARRIS: God, I hope not. I think I
13 said more than I expected to. Really, again, I
14 tried to boil it down to as simple as possible, to
15 these simple linkages. The schedules that we have
16 provided have a lot more detail about Energy
17 Commission dates in there. But again, the crucial
18 issue of the 90 days in-between.

19 I am certainly interested in hearing
20 from staff and from Mr. Ratliff about these
21 potential linkages. I know there are benefits and
22 burdens of the compromise schedule that he may
23 want to discuss. But that's essentially what we
24 are suggesting here is efficiencies.

25 PRESIDING MEMBER BYRON: Okay. And just

1 so I'm grasping all of this. You are proposing
2 what you are calling the 10/14 schedule now.
3 Really what you have shown is a mapping, if you
4 will, between the 10/1 and the 10/14. But you are
5 not proposing two alternative schedules here are
6 you?

7 MR. HARRIS: I am trying to offer you
8 two paths to the summer of 2009. That's simpler.

9 PRESIDING MEMBER BYRON: But one you
10 think better of than the other, correct?

11 MR. HARRIS: Well, I don't know,
12 actually.

13 PRESIDING MEMBER BYRON: Otherwise why
14 would you have given us the second path?

15 MR. HARRIS: I gave you the second path
16 because of the concern that the first path was
17 meeting resistance. That the joint document
18 couldn't be put out in December. That we couldn't
19 do workshops. Frankly, the simplest answer for
20 making, linking the FSA and the Draft EIS as I
21 have done in the 10/14 schedule. The simplest
22 answer for that is that it does allow the process
23 to move forward. And I think it does result in a
24 better quality document. The FSA is always better
25 than the PSA. Always. Just by the nature of the

1 beast, right. So I offer you 10/14 in a hope to
2 try to get some glimmer of compromise. And that's
3 why we gave it that name.

4 HEARING OFFICER KRAMER: Alicia.

5 MS. TORRE: You encouraged us to meet.
6 And the CEC staff and BLM did meet about a week
7 ago. And it was from listening to certain issues
8 there, particularly ones raised by BLM with regard
9 to joint publication, that led us to concoct the
10 compromise schedule.

11 PRESIDING MEMBER BYRON: Okay.

12 MS. TORRE: So I don't know whether it
13 is preferable or not from the viewpoint of BLM.

14 PRESIDING MEMBER BYRON: We are going to
15 find out.

16 MS. TORRE: We are going to find out.
17 But it was intended to address some of the issues
18 that were raised in that, in that session. So
19 that's where the genesis came from.

20 HEARING OFFICER KRAMER: But it is fair
21 to say both concepts are acceptable to the
22 applicant.

23 MR. HARRIS: Yes they are.

24 MS. TORRE: Yes.

25 MR. HARRIS: We would be happy with

1 either path. But we would like to pick the one
2 that the staffs of the agencies are the most happy
3 with.

4 PRESIDING MEMBER BYRON: And how much do
5 you see in terms of time that this would save off
6 the Committee's proposed schedule?

7 MR. HARRIS: They both arrive at a
8 decision in the summer of 2009. And our mapping
9 out, if you will, of the current order, the
10 existing order, the one we are subject to now,
11 gives us a decision in I think December of 2009.
12 Which ultimately -- More than two years after we
13 started this process. Which ultimately means that
14 we can't begin construction in 2009. We will be
15 into 2010. As Mr. Bar-Lev said, we need two years
16 to construct and we have got a 2011 on-line date.

17 MS. TORRE: You miss the end of year
18 investment tax credit that is very useful to get
19 shortly as you go into operation. And you miss,
20 you pay penalties under the contract, which has a
21 certain water flow effect on to project number two
22 and project number three. So it is a significant
23 issue to us.

24 PRESIDING MEMBER BYRON: Understood.

25 MS. TORRE: None of the schedules that

1 you have published to date show final decisions.

2 Everything out there says, to be determined.

3 PRESIDING MEMBER BYRON: Correct.

4 MS. TORRE: So in making that statement
5 basically we are going to the Energy Commission's
6 ordinary time line as you publish it on the web as
7 an advice to developers and looking at that. And,
8 you know, what that has is on the order of five
9 months from evidentiary -- for you to get your
10 final decision within four-and-a-half, five months
11 of the evidentiary -- not evidentiary hearings,
12 the prehearing conference. You know, Jeff, that's
13 a pretty common time period. So if you are
14 showing a prehearing conference in early June, you
15 know, you are after Thanksgiving.

16 PRESIDING MEMBER BYRON: All right. But
17 what I am trying to get at though is what do you
18 think the savings is in the schedule?

19 MS. TORRE: About five months.

20 PRESIDING MEMBER BYRON: About five
21 months.

22 MR. HARRIS: We conservatively estimate
23 the path we are on, the existing order gives us a
24 decision in mid-November. Which would mean no
25 mobilization in 2009, basically.

1 MS. TORRE: We have to finance this
2 project.

3 MR. HARRIS: And there are potential
4 appeals and other things that can happen. But a
5 summer of 2009 decision gives us the opportunity
6 to mobilize and so some significant work. And if
7 we catch a break on the weather, you know, who
8 knows how far we can get before the winter season
9 comes in.

10 We also have issues, and I don't want to
11 spend a lot of time on this. You know, we've got
12 tortoise fences we have to build. BLM is going to
13 want to allow salvage of some plants as well from
14 the public to come on-site and take away some of
15 the plants before we start work. There's a whole
16 lot of things that have to happen sort of at the
17 front end that can proceed actually even during
18 the appeal period.

19 But we are not here -- I want to be
20 really clear about this. We are not here pushing
21 this hard for three, essentially as Joshua
22 characterized it, three to six months, just
23 because we think three to six months is better.
24 We think it actually does allow us to start work,
25 significant work in 2009 and potentially avoid

1 missing the 2011 period.

2 PRESIDING MEMBER BYRON: Okay.

3 HEARING OFFICER KRAMER: Staff, do you
4 want to respond?

5 MR. RATLIFF: Dick Ratliff, counsel for
6 staff. We are sympathetic to the concern about
7 the schedule, we are concerned about it too. This
8 is an important project and we would like to see
9 it processed timely. We bothered to negotiate the
10 agreement, the MOU with BLM, for the very reason
11 that we thought it would expedite the case. We
12 tried to make those two processes as congruent as
13 possible through the schedule that we proposed.

14 But I have to emphasize that if we do
15 joint documents, those joint documents have to
16 work for both agencies. We could issue a PSA, as
17 has been requested. But if the PSA does not
18 satisfy the federal Draft Environmental Impact
19 Statement requirements it is not going to save any
20 time. And if we have BLM finding that our process
21 does not work for them and they decide to issue
22 their own Draft Environmental Impact Statement
23 then everyone is going to be a loser on this. It
24 is going to be a substantial setback to the
25 schedule. So we have to be very, I think,

1 cognizant of the requirements for Draft
2 Environmental Impact Statements, for BLM's needs,
3 and make sure that this gets addressed in a manner
4 that will be legally sufficient for both of us.

5 We had the original proposal from the
6 applicant, which is a creative proposal. And we
7 discussed it with BLM and BLM said it simply did
8 not work for them. I think they are concerned
9 whether it would work to legally have what is
10 essentially the Draft Environmental Impact
11 Statement being a workshop before it is even a
12 final document. So the BLM has reservations about
13 that approach that they can speak to themselves.
14 I won't purport to speak for them.

15 We have another, I think, very creative
16 proposal by the applicant that came yesterday.
17 And I don't know quite what to say about it
18 because I haven't had an opportunity to speak
19 either to BLM or the siting management about it.
20 We, I think, need perhaps a little more time to
21 look at it and see if it can work for us.

22 I don't want to reject it out of hand
23 because, like I say, I think we need to talk with
24 BLM about it. Or maybe Mr. Hurshman can address
25 it today. But it is an important thing that the

1 two agencies hold it up to the light to see if it
2 works and then try to reach some kind of
3 considered solution to this issue.

4 There is another aspect of this that I
5 hesitate to mention but it is, I think it is
6 important for the Committee to understand because
7 we are talking about this a little bit in a vacuum
8 with the scheduling. We are talking about only in
9 terms of process. But this is a project that is
10 not an easy project. It is a somewhat complicated
11 project.

12 I could begin by saying that typically
13 our process under the best of circumstances
14 terminates in a license in less than or
15 approximately 12 months. To the extent that we
16 take longer it is usually because of the
17 involvement of federal agencies, and in particular
18 the US Fish and Wildlife Service when there is a
19 biological opinion that is required for our
20 agencies. That usually makes the process longer.

21 And this is a situation in this case
22 where there are endangered species on the site.
23 It is a six square mile site. There are other
24 biological issues on the site. The BLM is going
25 to be filing a biological assessment with the US

1 Fish and Wildlife Service to try to get a
2 biological opinion in that regards.

3 We can put out a PSA or a Draft
4 Environmental Impact statement in the near-term
5 that didn't address those issues. But I am not
6 sure that you would want us to do that and I am
7 not sure that that would be a sufficient DEIS for
8 BLM's purposes. So I am concerned that we try to
9 make sure that whatever we do with the PSA that
10 the Draft Environmental Impact Statement takes
11 into consideration biological impacts and US Fish
12 and Wildlife's biological -- at least the
13 biological assessment that will be presented to
14 the Fish and Wildlife Service in that document.
15 Because I think a document that was silent on
16 perhaps the most significant environmental issue
17 would be a questionable document to have as a
18 Draft Environmental Impact Statement for federal
19 purposes.

20 All I am saying is that this is a
21 complicated situation for both of the agencies.
22 We are struggling with it a bit. We would like to
23 make -- We don't want to have the NOA just waste
24 the time for both agencies. We would like to find
25 a way to prevent that. But we don't want to be

1 quick to agree to a schedule that we think is not
2 going to satisfy the role that we have to play and
3 the role that BLM has to play. And I would really
4 like to turn it over to my confederates here. And
5 Mr. Hurshman in particular could address that
6 further if they want to.

7 PRESIDING MEMBER BYRON: Gentlemen, I
8 want to stay fully engaged on this but I
9 apologize. I need to ask if we can just suspend
10 for about one minute because I just need to take
11 care of something. And I will just step out for a
12 moment and be back. And I apologize to everyone
13 but I think that's the best thing I can do.

14 HEARING OFFICER KRAMER: Well let me
15 ask. Would there be any value for Mr. Ratliff,
16 you and BLM caucusing for 15 minutes privately and
17 then coming back?

18 MR. RATLIFF: Yes, I think it would be,
19 actually.

20 PRESIDING MEMBER BYRON: It would,
21 because you just saw this.

22 MR. RATLIFF: But again, I don't know if
23 15 minutes is enough time for us to really --

24 PRESIDING MEMBER BYRON: Let's just
25 suspend for a minute. I would like to continue

1 because there's a lot of questions. I apologize.

2 Just give me one minute.

3 HEARING OFFICER KRAMER: Okay, we will
4 go off the record for a moment.

5 (Whereupon, a recess was taken
6 off the record.)

7 PRESIDING MEMBER BYRON: Let's go ahead
8 and get started again. Mr. Kramer, I got what I
9 needed in terms of a minute or two of a break and
10 maybe you got what you needed.

11 HEARING OFFICER KRAMER: Yes. And staff
12 and BLM are back with us. Mr. Ratliff, do you
13 want to continue your response.

14 MR. RATLIFF: Well, I wonder if it is
15 not best at this point to let the BLM
16 representatives address this issue from their
17 perspective.

18 HEARING OFFICER KRAMER: Okay.
19 Mr. Hurshman.

20 PRESIDING MEMBER BYRON: Mr. Hurshman,
21 we are glad you are here today. Thank you for
22 coming.

23 MR. HURSHMAN: Thank you. I appreciate
24 being here. I would like to first emphasize, you
25 know, that staff at BLM and CEC, we have really

1 maintained a close working relationship over the
2 last year or so on this project and we communicate
3 early and often, I guess. We hold weekly
4 conference calls, we have held joint workshops and
5 meetings and we really have a good working
6 relationship.

7 You know, prior to the Committee's
8 Scheduling Order that you guys issued on September
9 26, at the staff level we sat down together and
10 outlined what we feel is perhaps a best case and
11 the most reasonable joint approach to putting out
12 documents.

13 And in that process, from my view,
14 looking at the EIS side of things, with our
15 mandatory 90 day public comment period and the
16 length of time it does take for our agency to be
17 able to, to be able to put a Notice of
18 Availability into the Federal Register, which is
19 the date that actually starts that 90 day comment
20 period. You know, the Committee's Scheduling
21 Order showed about a four month time frame in
22 there between that draft and Final EIS. And from
23 my experience, and every EIS I've written, seven
24 months is almost going to be a given in that
25 process there.

1 PRESIDING MEMBER BYRON: Meaning it
2 normally takes seven months.

3 MR. HURSHMAN: It normally takes
4 approximately seven months. And that pretty much
5 is assuming that we would not receive a huge
6 volume of comments that have to be responded to.
7 But to be able to prepare responses to all those
8 comments, organize those and then go back through
9 another notice process. To be able to publish
10 that Final EIS there is approximately a seven
11 month period of time.

12 HEARING OFFICER KRAMER: Now is that
13 seven months from drafting and starting the
14 approval of the NOA?

15 MR. HURSHMAN: That's pretty much from
16 the, from the NOA which releases that draft
17 document, to the NOA that releases the final
18 document.

19 HEARING OFFICER KRAMER: So it's the
20 publication of the NOA.

21 MR. HURSHMAN: Yes.

22 HEARING OFFICER KRAMER: So there is an
23 additional delay in getting ready to publish,
24 right?

25 MR. HURSHMAN: I think I tried to build

1 that delay into that seven months.

2 HEARING OFFICER KRAMER: Okay.

3 MR. HURSHMAN: That seven months
4 includes that Notice of Availability review
5 process.

6 HEARING OFFICER KRAMER: For both ends?

7 MR. HURSHMAN: For both ends. No, it
8 does not build it in on the draft end, that
9 getting to the draft document.

10 HEARING OFFICER KRAMER: So how much
11 more would that mean?

12 MR. HURSHMAN: Our current review
13 process on Notice of Availability is about eight
14 to ten weeks. From the time it leaves the
15 California State Office where it has been reviewed
16 and goes back through the Washington Office and up
17 through our Assistant Secretary for Lands and
18 Minerals to be published in the Federal Register
19 it's around an eight to ten week period of time.

20 HEARING OFFICER KRAMER: So then it
21 would be nine months, not seven.

22 MR. HURSHMAN: Yes. That's it. I think
23 from our agency's perspective, we really haven't
24 had time to react to the compromise schedule.
25 Which I am certainly willing to look at and to see

1 if there is any kind of a reasonable accommodation
2 that we can look towards that. But in looking at
3 your proposed schedule from your October 1 date,
4 the only way I can visualize that is that the NEPA
5 and CEQA analysis processes get segregated. The
6 CEC publishes a PSA and BLM then has to come along
7 and publish a separate draft EIS document.

8 PRESIDING MEMBER BYRON: And so is that
9 essentially the dissolution of our MOU then at
10 that point?

11 MR. HURSHMAN: That's the way I would
12 view it. Is that that is inconsistent certainly
13 with what was envisioned in the MOU. You know, I
14 think it is contrary to the goal of providing
15 joint analyses at that state and federal level for
16 our NEPA and CEQA documents.

17 Our Notice of Intent that we published
18 in the Federal Register to begin our EIS process
19 specifically said that we were going to be
20 publishing a joint analysis for review. Again, I
21 think that sort of flies in the face of us being
22 able to provide that joint analysis. So we would
23 actually probably have to step back and republish
24 a Notice of Intent to describe why we are not
25 doing a joint analysis.

1 You know, procedurally I don't have
2 staff available in the BLM internal staff or a
3 contractor on board right now to be able to pick
4 up and prepare a separate EIS document. So from
5 my perspective, looking at the applicant's
6 proposed schedule, it would actually back us up in
7 time from BLM's perspective, being able to respond
8 and put out a -- to be able to put out a document.
9 And to be able to get a contractor on board and do
10 that, I'm kind of estimating a four to six month
11 period of time that it would set me back from
12 where I am at today.

13 And I guess in regards to the compromise
14 schedule. As I said, we just really haven't had
15 time to sit down and really vet out what our
16 opportunities are and what options we may have to
17 think about realigning our documents at this Draft
18 EIS/FSA and then Final EIS/PMPD. A lot of
19 acronyms.

20 I think -- My first reaction is I still
21 have concerns about us being able to put an EIS
22 out separately or an EIS that is married to a PMPD
23 and make it -- I'm not sure what that document
24 would look like. I think from our agency's point
25 of view we are willing to take a look at it and

1 see if there isn't some opportunity to help
2 streamline things.

3 MR. RATLIFF: I would want to -- I know
4 from my perspective I think it would be useful to
5 try to figure out what that document would be.
6 What it would look like.

7 PRESIDING MEMBER BYRON: You're talking
8 about more than just a cover page here.

9 MR. RATLIFF: Well, the PMPD is not what
10 a normal FEIS would normally look like.

11 PRESIDING MEMBER BYRON: Right.

12 MR. RATLIFF: It is quite a departure
13 from that. And I think Mr. Harris is familiar
14 with that difference, which would be a difference
15 not only in perception but one which could go to
16 legal adequacy. So if we were to go to that
17 approach we would want to be sure that whatever
18 that document was, or whatever combination of
19 documents it might become, it could satisfy
20 federal law. And I don't know what that is right
21 now. I think we want to look at that and we'd
22 want you to look at it as well.

23 Well, I think we need to make sure that
24 we do satisfy NEPA requirements in that manner, at
25 whatever manner is required. It could be possible

1 to combine several documents for that purpose and
2 satisfy the federal requirement. I don't think
3 the PMPD by itself would satisfy. My guess is it
4 wouldn't because that is not what typically a
5 Final EIS looks like for federal purposes.

6 PRESIDING MEMBER BYRON: Can we get a
7 definitive ruling on whether or not they could be
8 equivalent documents from a legal perspective?

9 MR. RATLIFF: Well, when you say a
10 definitive ruling, usually those come from courts.
11 So we probably don't want that. I mean, that
12 means that we have gone to court. But we want it
13 to be something that we think is defensible in
14 court. And the only place that we could get that
15 opinion would be from the Solicitor General for
16 federal purposes. But my understanding is that
17 the Solicitor General is not readily available to
18 answer such questions for BLM.

19 I think to the extent we are going to
20 address it in the short term for our purposes, it
21 is probably going to have to be addressed by
22 Mr. Harris and myself.

23 HEARING OFFICER KRAMER: And
24 Mr. Hurshman's staff since in essence it is their
25 document. I think it is fair to say that the

1 PMPD, a traditional PMPD contains less detail than
2 an FSA. It is a summary of the evidence and
3 findings and conclusions.

4 MR. RATLIFF: Right.

5 HEARING OFFICER KRAMER: So in that
6 sense the two will differ. Am I wrong in assuming
7 that the FSA or DEIS is going to be basically the
8 Commission's normal format for a staff analysis or
9 staff assessment with whatever information added
10 that is necessary to satisfy the BLM's need to
11 have an adequate EIS? Is that a fair statement?

12 MR. RATLIFF: The PSA you are talking
13 about?

14 HEARING OFFICER KRAMER: Well either at
15 the PSA level or the FSA level.

16 MR. RATLIFF: Yes, that's right.
17 Although, you know, typically staff sometimes will
18 take a pass on a particular issue with the PSA
19 stage because they don't have enough information
20 or because they don't have any kind of conclusive
21 position on an issue that is still developing.

22 If this was a purely state proceeding
23 and purely an Energy Commission function we could
24 take a pass on the biological issue for now. We
25 could explain it as best we can but not describe

1 what the mitigation should be or even perhaps
2 reach a conclusion on significance of the impact.
3 But I don't think we can do that if the document
4 is also going to be the Draft Environmental Impact
5 Statement for federal purposes. I think you have
6 to have something more definitive than that.

7 HEARING OFFICER KRAMER: And so with the
8 compromise that might be more amenable to that. I
9 gather you are saying that you probably -- if you
10 had to issue a PSA today you would have to take a
11 pass on the biological issues.

12 MR. RATLIFF: That's right. We are not
13 ready to issue -- Well, we could issue a PSA but
14 we couldn't issue one that we could feel
15 comfortable met the EIS purposes if we issued it
16 now.

17 HEARING OFFICER KRAMER: Are there any
18 other topics where you would have to take a pass,
19 to use our new, technical legal term?

20 MR. McFARLIN: We are still waiting or
21 we are still dealing with a cultural resource item
22 as well. But I think that would be a much smaller
23 deficiency than the biological one.

24 HEARING OFFICER KRAMER: Okay.

25 MR. HARRIS: That one also has to be

1 treated secretly. We can't tell you what it is
2 but there is something out there.

3 (Laughter)

4 HEARING OFFICER KRAMER: Did I interrupt
5 you in the middle of a thought --

6 MR. RATLIFF: No.

7 HEARING OFFICER KRAMER: -- or did you
8 complete it? Okay. Mr. Hurshman, did you have
9 more to add?

10 MR. HURSHMAN: No, I think Mr. Ratliff
11 has really summarized it pretty well. When BLM
12 does release a Draft EIS we don't want it to be
13 missing vital information for the public. Every
14 time our agency has done that it comes back to
15 haunt us. It is not full disclosure for the
16 public and it will just draw more comments that
17 have to be responded to. And you run the risk of
18 having to start over again and re-release a
19 supplemental draft document.

20 HEARING OFFICER KRAMER: But as far as
21 the suggestion that staff could, in fact, pre-
22 workshop the PSA does that cause any difficulty in
23 your process? Knowing that there will be a
24 document down the road that presumably will be,
25 whether it is called an FSA or a refined PSA, it

1 will have had some work done to it and maybe be a
2 better document?

3 MR. HURSHMAN: I guess the eyebrows it
4 raises for me is that if it is -- if we have
5 incorporated all of the additional EIS components
6 into that document that we have been envisioning
7 doing related to purpose and need and how
8 alternatives are addressed it is almost --

9 You know, I would caution that we don't
10 get the perception that we are releasing a Draft
11 EIS at the time when it is a stand-alone PSA.
12 Because it has not gone through a review process
13 internally and we don't have, basically, the
14 permission from our Washington Office to release
15 an EIS at that point.

16 I think it is more than just putting a
17 different cover on the document. One that says
18 PSA as opposed to PSA/Draft EIS.

19 HEARING OFFICER KRAMER: So until you
20 get that as a final approval you would have to
21 call it speculation from your point of view.

22 MR. HURSHMAN: Well, yeah.

23 HEARING OFFICER KRAMER: Not necessarily
24 our opinion.

25 MR. HURSHMAN: Not BLM's document.

1 HEARING OFFICER KRAMER: Right. But
2 otherwise would that, is that a procedural hurdle
3 that is impossible to surmount as far as
4 completing your process?

5 MR. HURSHMAN: I'd say no at that point.

6 MR. HARRIS: If I could, Mr. Kramer.

7 HEARING OFFICER KRAMER: Go ahead.

8 MR. HARRIS: Just a clarification. In
9 our compromise schedule we refer to the FEIS. But
10 we suggested that may be a document that bundles
11 the Final Staff Assessment, the Response to
12 Comments, which is a uniquely BLM NEPA
13 responsibility, and the PMPD. Maybe those three
14 things bundled together. And I guess I would like
15 to say that I really do think we need a solicitor
16 opinion or solicitor input if we could possibly
17 get at what satisfies NEPA. Because I am of the
18 opinion that BLM has tremendous flexibility in
19 what they put into their Notice.

20 I have never envisioned that the FEIS
21 would be exactly the same as the environmental
22 document from the Commission, whether that's FSA
23 or PMPD. Because, for example, this Response to
24 Comments is a uniquely federal responsibility.
25 They handle response to comments different than

1 you do in your process because that gets
2 integrated into the evidentiary hearings and then
3 it becomes part of the PMPD.

4 I have never envisioned these documents
5 being exactly the same with a single cover and
6 everything stapled together, including federal
7 response to comments on a document. And I think
8 NEPA is sufficiently flexible that what goes into
9 the NOA is what is important. The declaration of
10 what is an adequate EIS is art and not science.
11 There is no one prescribed form for an EIS. It
12 doesn't have to be Chapter 1, Project Description,
13 Chapter 2. It doesn't follow those kind of
14 formats. I think there is a tremendous amount of
15 flexibility.

16 I actually want to answer a question you
17 asked earlier about whether we have a preference
18 on these things. I think probably sitting here
19 today our preference is for the compromise
20 schedule.

21 PRESIDING MEMBER BYRON: Because it
22 sounds to me as though given what Mr. Hurshman
23 said, the PSA is incomplete and would create
24 problems if we tried to equilibrate that to the
25 Draft Environmental Impact Statement.

1 MR. HARRIS: And I think it's a function
2 of where we are in time too as well. We have got,
3 you know, most of an Energy Commission document
4 apparently together for the Preliminary Staff
5 Assessment. I think it gives the BLM time to
6 catch up, if you will.

7 I guess I would disagree, and I don't
8 want to talk about substance, about whether there
9 is adequate information available to the staff to
10 put out a legally sufficient NEPA and CEQA
11 document. We have a status on all the data
12 responses to date. We think if staff thinks there
13 is anything outstanding from an informational
14 perspective, we don't necessarily agree that they
15 need that for their environmental document.

16 But setting aside that issue, it seems
17 to make more sense to me that we would try to
18 marry up the processes. I think Mr. Hurshman
19 becomes more comfortable if these documents are
20 published on the same date. And that would
21 certainly be the intent, to publish them on the
22 same day.

23 But let me give you one more
24 hypothetical. If you did a single document, a
25 uniform covering everything like that and it is

1 ready to go, you guys can declare it to be a Final
2 Staff Assessment for example. It is not a Draft
3 EIS until that Notice is published. So there is a
4 big legal fiction in all this. I love legal
5 fictions. That the document is something until it
6 isn't. That it is not anything until the NOA is
7 published, okay.

8 And NEPA and CEQA are very much
9 informational documents. If you have the same
10 information to inform the public, if it is
11 published on one date or published on another
12 date, as long as the information is there, that's
13 the purposes of those environmental statutes, to
14 convey the information. So we are getting hung up
15 on the legal fictions I think a little bit and
16 that's probably why the compromised schedule makes
17 more sense.

18 I don't -- If I was sitting across the
19 table and they had handed me something less than
20 24 hours ago I'd be saying the same thing that
21 they are saying now. Which is, don't expect us to
22 give you a definitive answer today that isn't no.
23 So I am not going to ask them for a definitive
24 answer today. So that's why we are trying to line
25 these two processes up.

1 PRESIDING MEMBER BYRON: No, but I hope
2 what you are taking from this is that you have got
3 both the federal and state agency attempting to
4 see if we can come to some resolution.

5 MR. HARRIS: Absolutely, absolutely.
6 The cooperation has always been good. And we
7 offered the compromise really to kind of keep that
8 spirit moving forward. We want something that
9 they can live with. As I said before, I declared
10 our allegiance, if you will, to the compromise
11 schedule. That we would take whichever one they
12 were least bothered by or most satisfied with.

13 PRESIDING MEMBER BYRON: And fulfilling
14 all of their legal obligations and duties.

15 MR. HARRIS: Duties as Miss America,
16 yes.

17 HEARING OFFICER KRAMER: Okay. But the
18 compromised schedule has, let's see. Where is the
19 date where they start the Washington review of the
20 NOA for the DEIS? There it is.

21 MR. HARRIS: We actually didn't put
22 internal processing deadlines in here. We
23 actually did a draft where we said, you know,
24 first comments back from BLM to CEC, second
25 comments back from BLM to CEC, BLM sends to the

1 Western, you know, WOASLM, all those internal
2 processes. We didn't think it was our place to
3 try to lay those deadlines out there.

4 HEARING OFFICER KRAMER: Isn't that in
5 here on December 1st, though?

6 MS. TORRE: No.

7 HEARING OFFICER KRAMER: Is that what I
8 am looking at?

9 MS. TORRE: What is intended -- I mean,
10 the thought we had was that Tom would probably
11 choose to start that process after the PSA had
12 been issued. Because that was originally your
13 thinking when you were looking at a mock-up was
14 that you would start the NOA process at the time
15 that the mock-up was delivered. In this case it
16 wouldn't be a mock-up, it would actually be a
17 published document.

18 So we would presume that given that you
19 were ready to start an NOA on a mock-up. That you
20 would be ready to start it at that point. But you
21 would be getting -- you know, there would still be
22 rounds of comments and changes as BLM would
23 require before the -- So our thought was that you
24 would be starting that in November.

25 HEARING OFFICER KRAMER: Well, maybe I'm

1 just seeing, I could call this an estimate, I
2 guess, in the compromise schedule. But it does
3 talk about --

4 MR. HARRIS: Yes.

5 HEARING OFFICER KRAMER: It says, start
6 review of NOA for DEIS with WO. I presume that is
7 Washington Office. And what is ASLM?

8 MR. HURSHMAN: Assistant Secretary for
9 Lands and Minerals.

10 HEARING OFFICER KRAMER: Okay. In
11 Washington?

12 MR. HURSHMAN: Yes.

13 HEARING OFFICER KRAMER: Okay.

14 MR. HURSHMAN: It is the Department of
15 Interior.

16 MR. HARRIS: I'm sorry, Mr. Kramer, you
17 are correct. We didn't put those on our time
18 line, the attachment, but they are here. I
19 apologize.

20 HEARING OFFICER KRAMER: That's okay,
21 I'm just trying to see if this, if this works with
22 the time estimates that Mr. Hurshman gave us for
23 when he could, you know, when his process could
24 produce the next deliverable. This allows six
25 weeks, roughly. Because then it has the Final

1 Staff Assessment being issued by both on January
2 15.

3 MS. TORRE: It is not going out. We
4 would assume you would start the NOA around
5 November 14 when the PSA is published. Originally
6 when the staff was looking at that date as a mock-
7 up of the Draft EIS, that was when the NOA process
8 was going to be started.

9 HEARING OFFICER KRAMER: Okay.

10 MS. TORRE: So it would be more like
11 eight weeks.

12 HEARING OFFICER KRAMER: All right, so
13 that allows eight weeks to get the NOA out.

14 MR. HARRIS: If they can do it in a week
15 that's great, if it takes them eight that's fine.
16 We just didn't want to presume, although I guess
17 we did, to say when they should start that. I
18 guess that date -- If I had to correct that I
19 would say they would start that process on the
20 14th once they had the document. Mr. Kramer, I
21 apologize for having that in the wrong box. If
22 Tom wants to start tomorrow I'm okay with that
23 too.

24 MS. TORRE: You're just showing the
25 Final, when it's published.

1 HEARING OFFICER KRAMER: But they would
2 have to, they would be putting the NOA on the FSA.
3 Which they wouldn't have for review at the point
4 they started the review. So I don't know if the
5 BLM system works that way. But what I am hearing,
6 I guess, is you can't send a Draft Notice up with
7 a product to be designated later.

8 MR. HURSHMAN: It has to be put
9 together.

10 HEARING OFFICER KRAMER: They probably
11 don't review things that way, right?

12 MR. HARRIS: We are not assuming the
13 document is finished on 1/15, we are assuming that
14 is the publication date.

15 MR. McFARLIN: But the NOA process
16 started in December. Before it was published.

17 MS. TORRE: Actually, my understanding
18 of that was a little bit different. You are not
19 sending the final document up for review but the
20 summary of the document. And that would be -- You
21 have to have a good mock-up to know that you were
22 happy with that summary.

23 MR. HARRIS: But this is one of the
24 traps right here too. We are adding, trying to
25 add time line in for things we can't know. We

1 don't know it will take eight weeks. It may take
2 less, it may take more. But we have tried to
3 provide a general framework here. I guess I want
4 to avoid building a schedule that assumes eight
5 weeks for a process that might not take eight
6 weeks. That is what we are trying to avoid.

7 HEARING OFFICER KRAMER: Well the
8 original, the recent Committee Revised Schedule
9 was kind of set up like that. We were hoping, and
10 as we said in the narrative, if you can do it
11 sooner, great. We were just trying to estimate
12 here what was -- it was just based on what the
13 staff put in their status report. But I think we
14 do need to understand things like how long it
15 takes to get an NOA out the door. Because that
16 tells us whether or not this is realistic.

17 MS. TORRE: I guess our thought here was
18 that what you had in your schedule here was
19 November 14 you have the Preliminary Staff
20 Assessment/Draft Environmental Impact Statement.
21 With a PSA issued on November 14 the holes or
22 edits that you are looking to alter as the BLM --
23 to edit or change or add to are there but they are
24 limited. And so the period of time you had was
25 from November 14 to January 20 for the internal

1 noticing process to occur.

2 HEARING OFFICER KRAMER: Right.

3 MS. TORRE: And our thought was that
4 that would start at the time the PSA for the
5 staff, the staff document, solo document comes
6 out. In the same way it would have happened here
7 because that is -- You have changes between the
8 PSA and the FSA but they are not vast or huge. I
9 mean, that was our thinking. The same time period
10 that you have allowed here. Just as you are
11 having the PSA workshops and getting public
12 comment BLM has got its comments and there would
13 be time for two rounds of those comments.

14 HEARING OFFICER KRAMER: I see. So you
15 are assuming that the PSA and the FSA would look
16 very much alike.

17 MS. TORRE: Well, very much. I mean --

18 HEARING OFFICER KRAMER: Well no, not
19 significant changes. Because it sounds like the
20 only way that BLM can start on their NOA is under
21 that assumption. And even that may be stretching
22 it with their process. But they would have to say
23 that we don't have this FSA thing that we are
24 going to put the NOA on but it is going to look a
25 lot like this PSA that's already been published.

1 MS. TORRE: But remember, they have been
2 working together for months on things like the
3 alternatives analysis. I mean, there's parts that
4 they have been working through and have that are
5 the significant --

6 MR. HARRIS: The information in the NOA
7 too is not a summary of what the environmental
8 document says. The A in NOA is availability. And
9 what it does is say the document is available. So
10 the information conveyed in the NOA, and Tom, you
11 can certainly correct me if I am wrong, is a
12 general summary of what the project description
13 is, what they have identified as issues. And here
14 is the website to go to to get the document and
15 here are the contacts, here's the dates for
16 comments. It is not a substantive review of the
17 internal workings of the document. And the
18 project description is not going to change
19 significantly during that time frame.

20 HEARING OFFICER KRAMER: Well that
21 sounds like that well may be true. But it also
22 sounds like BLM upper management uses their
23 signature on that document to control and allow
24 them to review the substance of it before they let
25 it go out. Is that fair to say?

1 MR. HURSHMAN: I'll say typically the
2 substance of the document is reviewed at the field
3 and staff level and not at the Washington Office
4 Headquarters level. However, it is not unheard of
5 for headquarters to ask to see the document and to
6 have that document and to have more detailed
7 briefings and explanations of what is in it.

8 HEARING OFFICER KRAMER: So in theory
9 then BLM could work with less than the final
10 document if they are willing.

11 MR. HURSHMAN: In theory. And if we
12 think we are at a point where the FSA will look
13 like that PSA.

14 HEARING OFFICER KRAMER: So you
15 gentlemen may not be able to make a commitment but
16 I'll ask. Is that worth trying to try to save
17 some time, to process it that way?

18 MR. HURSHMAN: I think any of these
19 options are worth us discussing and sitting down
20 and trying to vet out exactly what the documents
21 need to say and look like and what is available at
22 those times. But you're right, I am not going to
23 commit that we can do one thing or the other at
24 this point today.

25 HEARING OFFICER KRAMER: Let me float an

1 idea that perhaps, given the element that staff
2 didn't have much time to digest this, that we need
3 to perhaps continue or schedule a new conference
4 in a few weeks after they have had -- in the
5 meantime the parties could all get together and
6 have their own discussion to see what they can
7 work out. I'll let the applicant respond to that
8 thought first and then the staff and BLM.

9 MR. HARRIS: We were just over here
10 having the same whisper conversation that we think
11 it would be a good idea to allow --

12 PRESIDING MEMBER BYRON: You don't know
13 what we whispered in our conversation.

14 (Laughter)

15 MR. HARRIS: These are very sensitive
16 microphones. I don't know about the people on the
17 phone, though. It might be good to get together
18 and try to hash out a compromise here.

19 As I said earlier, if you dropped this
20 on me in less than 24 hours I wouldn't be able to
21 make a commitment to you today so I don't expect
22 these folks to be able to do it. And I also know
23 that BLM has traps they have got to go run, so to
24 speak. That may not be the best metaphor for BLM.
25 But I would prefer that it not be weeks. We were

1 thinking Friday.

2 PRESIDING MEMBER BYRON: Well
3 Mr. Harris, in all fairness, we responded within
4 two weeks to schedule this. And apparently that
5 was a little too fast, seeing as we only got your
6 revised schedule yesterday.

7 MR. HARRIS: We took to heart --

8 PRESIDING MEMBER BYRON: We will do our
9 best to schedule another conference as soon as
10 possible.

11 MR. HARRIS: Let me respond, though.
12 The compromise schedule was our effort to try to
13 give something that might be more palatable to
14 these folks. Because the Order said, get together
15 and talk about what might work. And what we heard
16 was, nice try but we don't believe your view of
17 NEPA, Jeff, the 10/1 schedule will work. I still
18 think 10/1 can work and I still think a solicitor
19 can confirm that.

20 But in any event, that is what the 10/14
21 was all about. It was an effort to try to get
22 these things together. We would really like to do
23 it sooner than later because, you know, the more
24 time that passes then the more likely we are to
25 miss the summer of 2009.

1 PRESIDING MEMBER BYRON: What is
2 happening right now as time passes, if I could
3 ask. Have all the data requests been fulfilled?

4 MR. HARRIS: I'll hand you our view of
5 this and staff may disagree.

6 PRESIDING MEMBER BYRON: I've gotten
7 into another topic now, haven't I?

8 MR. HARRIS: No you haven't. I'll just
9 give you -- This is our view of the status of the
10 data request. We think things are pretty much
11 done. And like I said, this is art, not science.
12 I agree with the staff's assessment. They have to
13 decide if they have enough information.

14 And I don't want to spend a lot of time
15 on this document. All it is intended to show is
16 the status of discovery requests for this thing.
17 And I guess what I would point out to begin with
18 is there are ten subject matters and they are kind
19 of the general ones there that you see for which
20 there were no data requests. The information we
21 provided in August of 2007 apparently has been
22 satisfactory. We have absolutely no data requests
23 received in those other subject matters.

24 And then moving down. You know, data
25 requests received. Waste management. That's the

1 first one that we completed, I think in January of
2 2008. So from our perspective, you know,
3 everything from waste management up has been
4 basically ready for a final section since January.
5 You will see a lot of stuff in August and
6 September as well so I know that there is some
7 work that is going on by staff to digest the
8 information we provided. But from our
9 perspective, we were complete with our information
10 more than a month ago.

11 MS. BROWN: Can I ask my question?

12 HEARING OFFICER KRAMER: Sure.

13 MS. BROWN: I'm sorry. Susan Brown
14 speaking for Commissioner Boyd. Your compromise
15 schedule is heavily predicated on the completion
16 of a biological assessment as of yesterday. Did
17 that happen? I don't understand that.

18 MR. HARRIS: It is not heavily predicted
19 on it. It intended to show that the Energy
20 Commission itself approves projects without
21 biological opinions in hand on a regular basis.

22 MS. BROWN: Is that true?

23 MR. HARRIS: Absolutely true. The BRMP
24 will say, you know, listen to your 401 permit, do
25 your 404, and whenever you get your final

1 biological opinion live by that. So as a
2 commission you can actually approve a project
3 without the biological opinion.

4 In this case BLM has slightly different
5 requirements. They are going to want that at
6 least before the ROD. The absolute latest would
7 be before the ROD. But they certainly would like
8 to have it sooner than later. And I don't know
9 when they are going to send the document over.

10 Because we draft the biological
11 assessment, give it to the agency. They have to
12 make it their own, whatever they do to make it
13 their own, and then then they send it on for
14 consultation. There's a 135 day period there. So
15 we'll definitely need that biological opinion pre-
16 ROD. We hope to have it a lot sooner. But that
17 is not a variation at all from the typical
18 permitting process for the Commission.

19 HEARING OFFICER KRAMER: I guess I have
20 a more nuanced understanding of how that works.
21 And that would be that the Commission has
22 sometimes approved projects without a final
23 biological opinion but it has always been of the
24 opinion that it knew pretty precisely what that
25 opinion was going to say and there would be no

1 surprises.

2 MR. HARRIS: Well, I guess I disagree
3 with the nuance because at the end of the day --
4 in the Metcalf case, for example, my recollection
5 there is that the final biological opinion came in
6 after the decision.

7 You're right, they have gotten some
8 indication. Typically in the case when it is not
9 available you will have some indication by letter
10 from the Service saying, you know, we are almost
11 done and we think, you know, that this is going to
12 work out this way. You will have conversations
13 between Rick York and the biological staff. So
14 you typically do have some kind of idea of where
15 you think it is headed. But as a matter of law
16 you make that a condition of certification that
17 part of the permit is compliance to the biological
18 opinion.

19 But again, I don't want to spend too
20 much time on that because that is not going to be
21 the case here. BLM is going to require --

22 MS. BROWN: I just didn't understand.

23 HEARING OFFICER KRAMER: I think part of
24 the question was it was listed as a deliverable.

25 MS. BROWN: It was listed as a

1 deliverable and it seemed to be in sequence with
2 the rest of the schedule. I just wanted to
3 understand that.

4 MR. RATLIFF: I think it is an important
5 question and I was going to ask it too. We want
6 to know when the biological assessment is
7 submitted and also when it is accepted as complete
8 by you as Fish and Wildlife Service?

9 MR. HARRIS: It's in the hands of the
10 BLM. It has been for how long, John? A week,
11 two?

12 MR. CARRIER: September.

13 MR. HARRIS: Since September.

14 MR. HURSHMAN: I think I can respond.
15 We do have the applicant's prepared version of
16 that, of that biological assessment. We have had
17 joint calls with Cal Fish and Game and with the
18 Fish and Wildlife Service and our agency, and I
19 think CEC participated on that.

20 The general understanding of all the
21 biologists involved in that review is that they
22 don't understand what it says right now at this
23 point in time, particularly as it relates to the
24 overall project description. And so we have some
25 additional work that has to be completed on that

1 document before we are going to be able to submit
2 it.

3 It is good that all of our agencies are
4 talking at this point and that we are getting
5 input and preliminary feedback from the Fish and
6 Wildlife Service. And our goal is to, you know,
7 eventually submit a document that's approvable and
8 one that doesn't have a bunch of holes in it or
9 that comes back to cause us to have to change and
10 re-initiate our consultation.

11 I don't have an estimate of exactly how
12 long it is going to take us to modify that
13 document to make it meet everybody's needs at this
14 point. But we need to work with -- What has been
15 suggested to me is that we get the applicant's
16 biologists who actually did most of the analysis
17 together with our staff and sit down and lock them
18 in a room for however many days it takes to make
19 sure that it is a readable and understandable
20 document.

21 MS. TORRE: I think we put it down there
22 just because it is such an important other agency.
23 It wasn't because it was the starting date on
24 which the rest of it was predicated. I think was
25 really your question. We thought everybody cares

1 about the biological opinion, wants to know where
2 it is in this format. But you are talking about a
3 135 day schedule. And we are talking now about
4 something that would be happening in the late
5 summer, way past 135 days. So it is not that, you
6 know. It's not that the rest is predicated on it.

7 HEARING OFFICER KRAMER: It is quite
8 often one of the last straws to get into the -- my
9 analogy is failing me.

10 MS. TORRE: That's why we wanted to show
11 it.

12 MR. HURSHMAN: I guess I would say also
13 from BLM's perspective, it is most typical for us
14 to have that biological opinion in hand when we
15 publish our Final EIS. And at times we will have
16 published our Final EIS if we have a good
17 understanding of what that BO is going to say and,
18 you know, for whatever technical reason they can't
19 get it finished by that date. Sometimes we will
20 defer until we have a ROD. But generally
21 speaking, we will have it in hand to publish the
22 Final EIS.

23 HEARING OFFICER KRAMER: How much time
24 normally passes between the Final EIS and the ROD?

25 MR. HURSHMAN: There's a regulatory 30

1 day period of time before BLM can sign a ROD and
2 issue, in our case, the right-of-way grant for a
3 project. In this particular project there is also
4 a requirement for a 60 day review by the Governor.
5 A consistency review because we are amending our
6 land use plan. Oftentimes the Governor's Office
7 will not take a full 60 days to review that.

8 And in the case of this minor amendment,
9 which basically is just to address the fact that
10 our current land use plan addressed the number of
11 power plants that could be built. And they were
12 only ones that were envisioned back in 1980 when
13 the plan was published. So obviously this
14 proposal was not on the board here so we need to
15 be able to designate those lands as suitable and
16 available for this power project.

17 PRESIDING MEMBER BYRON: Thank you. I
18 was wondering what that was. Thank you for the
19 explanation.

20 MR. HURSHMAN: That's kind of what --
21 It's a very minor amendment but there are some
22 procedural time frames in there we have to meet.

23 HEARING OFFICER KRAMER: So the notion
24 of continuing this conference to -- we get into
25 some scheduling issues with the Commissioners.

1 Friday, is that? Mr. Harris I think proposed
2 Friday. Is that soon enough for staff and BLM or
3 do you feel you need more time?

4 MR. HARRIS: Can I elaborate? I wasn't
5 suggesting that we need to bring the Commissioner
6 and you back, Paul. I was just trying to get us
7 back together in a room to talk among ourselves.
8 That's why I thought it should happen sooner. We
9 have to schedule a meeting with you all again and
10 that's -- I understand the scheduling constraints.
11 I actually would just like to sit down with these
12 guys and talk with them.

13 PRESIDING MEMBER BYRON: Is there a
14 noticing issue or do we just suspend this?

15 HEARING OFFICER KRAMER: We can continue
16 this. I would suggest that if you think you might
17 have to come back as a group with the Committee
18 that we pick a date now so that we reserve it.
19 Things as simple as getting this room can be an
20 issue unless we do it somewhat in advance. So we
21 should get it on our calendars. It can be
22 tentative, it doesn't have to happen. But we are
23 all in the room. We should try to pick a date
24 right now rather than play e-mail tag later.

25 MR. RATLIFF: And the purpose of this

1 meeting would be to get resolution of whether or
2 not we can with the alternative schedule, the
3 compromised schedule?

4 HEARING OFFICER KRAMER: Right, a
5 continuation of this conference to see if -- so we
6 can more fully understand what is possible and
7 revise the Order, the Scheduling Order if
8 necessary.

9 PRESIDING MEMBER BYRON: Mr. Hurshman,
10 are you willing to do that?

11 MR. HURSHMAN: Sure.

12 PRESIDING MEMBER BYRON: I appreciate
13 that you are willing to. I appreciate it. We are
14 trying to be responsive here to the applicant and
15 see if we can figure out -- But it is bigger than
16 just this applicant, of course. I think we all
17 recognize that this is path-setting for other
18 projects that we anticipate will be coming in as
19 well.

20 HEARING OFFICER KRAMER: So if you need
21 the Committee what seems to be about the
22 appropriate time?

23 MR. HARRIS: We will make it work. And
24 we understand and appreciate Mr. Hurshman travels
25 from Colorado. We would like to have something in

1 the next seven to ten days if that is doable for
2 people.

3 HEARING OFFICER KRAMER: It occurs to me
4 I haven't asked the folks on the telephone if they
5 wanted to make any comments. Does anyone on the
6 telephone wish to make comments. Are you still
7 there?

8 MS. GULESSERIAN: Tanya is still here.
9 We are just listening in.

10 HEARING OFFICER KRAMER: Okay. No one
11 else? Okay, Mr. Harris, I think -- Commissioner
12 Byron, as I recall you were unavailable next week,
13 correct?

14 PRESIDING MEMBER BYRON: I am planning a
15 vacation next week.

16 MR. HARRIS: Much deserved.

17 HEARING OFFICER KRAMER: Commissioner
18 Boyd may actually be available on the 27th. I
19 haven't updated his schedule but there was a time
20 where I knew that he was.

21 MS. BROWN: I did not bring my
22 BlackBerry.

23 MR. HARRIS: Is there a Business Meeting
24 next Tuesday as well? Next Wednesday, I'm sorry,
25 the 22nd?

1 MS. BROWN: Yes there is.

2 HEARING OFFICER KRAMER: Commissioner
3 Byron is off that week anyway.

4 PRESIDING MEMBER BYRON: It's Wednesday.

5 MR. HARRIS: It's Wednesday, I'm sorry,
6 on the 22nd. If Commissioner Boyd was available.
7 If he is going to be here for the Business Meeting
8 could we do it at the end of the Business Meeting.

9 HEARING OFFICER KRAMER: Commissioner
10 Byron won't be here on the 22nd. The 27th
11 apparently works for Commissioner Byron, it may
12 work for Commissioner Boyd, it works for me.

13 MR. HARRIS: Continue it to that date?

14 HEARING OFFICER KRAMER: Is ten o'clock
15 good?

16 PRESIDING MEMBER BYRON: You know what,
17 I think ten would work. But just to be on the
18 safe side I think we should start at nine if that
19 is possible.

20 HEARING OFFICER KRAMER: Okay.

21 MR. HARRIS: That will be a continuation
22 of this conference? You would notice that or do
23 we have to --

24 HEARING OFFICER KRAMER: I'll go look at
25 my rules again in my cubicle. I'll put a notice

1 on the door and I will send out an e-mail notice
2 to everyone on the proof of service. With
3 probably a new call-in number. So is there
4 anything, any other business we need to discuss
5 today then?

6 PRESIDING MEMBER BYRON: You know, I
7 would like to say just a couple of other remarks
8 that maybe should have been said early on. And
9 I'll be brief. Because we haven't had opportunity
10 to meet, at least I have not been involved in
11 meetings with the applicant, BLM and others since
12 we did our original site visit back in January.
13 And I am eager to continue to see this move
14 forward. I don't mean to make it sound we go hide
15 for months on end as Commissioners. But things
16 that didn't get said that I want to make sure are
17 clear up front.

18 I really compliment BLM and the staff on
19 the Memorandum of Understanding that they did. I
20 think that was a really good thing. It showed a
21 lot of foresight. And not knowing how all these
22 processes merge together I think the staff and BLM
23 did an excellent job of trying to figure that out
24 ahead of time. And I think the applicant and
25 other applicants are going to benefit by that.

1 And I understand we are going to try and see if we
2 can fine-tune it here.

3 I do recognize, as the applicant pointed
4 out in the first hour, that timeliness is
5 important, speed is important. We recognize that.
6 It is a difficult project for a number of reasons
7 as the applicant pointed out. It is the first in
8 of its kind in 18 years. The laws have probably
9 changed a little bit during the course of that
10 time. Welcome back to California. But we have
11 probably made it a little more difficult and not
12 easier during that time.

13 MR. BAR-LEV: I was at PG&E during the
14 interim so I've been keeping up with the law.

15 PRESIDING MEMBER BYRON: And of course
16 we are all highly motivated around this because
17 this is consistent with our RPS goals for the
18 state as stated by the Governor and this agency.
19 And I have characterized it before, these kind of
20 projects are sort of the holy grail of the power
21 industry. We really want to try and be successful
22 in this area so we can meet larger goals. But you
23 picked BLM land and that made it a little more
24 complicated. I'm not sure whose land that is. I
25 mean, it is in California.

1 (Laughter)

2 PRESIDING MEMBER BYRON: But we have
3 some joint jurisdiction here. And we have similar
4 interests in protecting the value of that land and
5 how it is used and we are not compromising that in
6 any way. At the same time we have got to maintain
7 the integrity of both the processes, legal and
8 otherwise, that they have to follow and that we
9 have to follow. So I appreciate your earlier
10 remarks that were very complimentary of our
11 process but that doesn't, that doesn't diminish
12 BLM's process in any way and the legal obligations
13 they have to fulfill.

14 And of course we are pathfinders here,
15 as I started to say earlier. To a great extent
16 this is the first. The laws have changed. We are
17 charting a new course for this project and we hope
18 for many others. So we really are all motivated
19 in the same direction to get the process and
20 fulfilling all the legal requirements correctly.

21 And I know I have a commitment from the
22 BLM at Senior management's level and commitment
23 from this Commissioner. Although I haven't had a
24 chance to talk to Commissioner Boyd specifically
25 about this I know he feels very strongly as well.

1 We are going to try -- We are going to fulfill
2 each other's obligations here. Because it is the
3 precedent we are setting. We are charting the
4 process as we go forward here.

5 So having said all that, I appreciate --
6 Maybe I should have said some of those things
7 earlier. But I want to make sure we all have the
8 same starting point and the same understanding as
9 to what we are trying to do here. I appreciate
10 your efforts to work together with the applicant
11 to see if we can figure out a way to mesh our
12 schedules and our requirements and do this in a
13 more timely way. And I think that means we will
14 be back here on the 27th at nine a.m.

15 HEARING OFFICER KRAMER: If we need to
16 be. If the parties stipulate to a schedule. Of
17 course that will have to include the intervenor,
18 CURE, in that. Then we may be able avoid the
19 meeting. But otherwise we will be here to further
20 discuss it.

21 So is there any other business from any
22 party?

23 Does anyone on the phone wish to make a
24 final comment?

25 Okay, hearing none we will continue this

1 Committee Conference until October 27 at nine a.m.
2 It will be a meeting room in the Energy Commission
3 building here. It may not be the same one but I
4 will send out a revised, a notice of the
5 continuance that will have those details and a
6 another call-in number. Thank you.

7 MR. HARRIS: Thank you.

8 (Whereupon, at 12:08 p.m., the
9 Committee Conference was
10 adjourned.)

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CERTIFICATE OF REPORTER

I, RAMONA COTA, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Committee Conference; that it
was thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
conference, nor in any way interested in outcome
of said conference.

IN WITNESS WHEREOF, I have hereunto set
my hand this 24th day of October, 2008.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345□